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IN THE SUPERIOR COURT

OCTOBER 25, 1913

The People of the State of California

The Gold Run Drain and Mining Co.

VOLUME 26

IN THE SUPERIOR COURT,

State of California, County of Sacramento.

OCTOBER SESSION, 1881.

HON. JACKSON TEMPLE, - - - - - PRESIDING JUDGE.

WINFIELD J. DAVIS, OFFICIAL REPORTER.

SAMUEL OSBOURNE AND WILLIAM M. CUTTER, REPORTERS.

The People of the State of California,
vs.
 The Gold Run Ditch and Mining Co.

COUNSEL:

For Plaintiff,

HON. A. L. HART, Attorney General, GEORGE CADWALADER, ISAAC S.

BELCHER, A. L. RHODES, RICHARD BAYNE.

For Defendant,

J. K. BYRNE, W. C. BELCHER, S. M. WILSON, W. T. WALLACE, A. B.

DIBBLE, A. P. CATLIN.

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Winfield J. Davis
Official Reporter

In the Superior Court
of the State of California
in and for the County of
Sacramento

The People of the State
of California

vs.

The Gold Run Ditch
and Mining Company

Morning Session

Wednesday

Dec. 21st 1881

Testimony
of
Stephen G. Deers.

direct resumed

Mr. Rymer Did you ever work
in the Indiana Hill Claim?

A Yes

Q When, and how long?

A Well, I have only worked
in that claim in the last two
years.

Q I wish you would describe to
the Court the size of the boulders
that you have seen in the claim,

the largest I mean?

A Well, I have seen some come down there ten or twelve feet, and some only four or five feet thick.

2. In what manner was it necessary to dispose of these boulders? A Well, they had to blasted up. If they did not blast fine enough they had a break them up with sledge hammers.

2 What then was done with them? A Well, then they aimed to run out through the boxes.

2 Where did they go to?

A They went to Canon Creek and from there into the North Fork.

2 How long have you been engaged in mining in that immediate neighborhood, Mr. Beers? And state to the Court the length of your experience as a miner in reference to the particular character of the material in the district?

A Well, I have been mining

there since 1852 or in 1853 rather
— I began working in 1853, began
washing dirt.

Q Do I understand you that
you have been continuously
mining, engaged in that business
during that time?

A Yes. I never followed anything
else for a livelihood but that

I say that has been for
29 years? A. Yes

Q From your knowledge and ex-
perience in that particular dis-
trict what would you testify to
be the quantity of solid material
contained in that mine — I
mean to say rocks and hard
material as compared with that
which would be washed away by
water — that which would pass
off in suspension?

Objected to, and question withdrawn

Q From your experience and
knowledge and observation de-
rived during the last 29 or 30
years, how much do you say
of that material in the mine
now, in the bottom stratum

does pass off in suspension in the water? I mean, what will float away from the mine?

A Well, there is about $\frac{3}{4}$ of what is left ~~there~~ not move off at all, unless there is powder used on it. I do not think water will have any effect on it. I am pretty sure of it. I have used water against Bank for two days there and it ~~could~~ not get down 3 cart-loads of dirt. It will not cut out that dirt.

2 How large a stream of water did you have?

A The stream is generally the strongest with a 5 inch nozzle but to run dirt, when we had plenty of dirt we generally get a large nozzle, so as to get more water.

2. Do you know the quantity of water that is used through a 5 inch nozzle? A No sir, I never measured it. I should think it would take 700 inches to fire it with the pressure

they have there.

Q Under what pressure?

A Well, they must have over 300 feet of pressure there

Q You say that a stream of that character makes no impression on the bank?

A No sir, not in the place where I spiked it

Q What is the appearance of the water after it runs away from the bank after having been thrown against it under this pressure of which you spoke?

A It is almost, I do not know but it is quite as clear as when it goes through the nozzle

Crop - Examination of S. G. Beers

Mr. Hart. This last answer of yours has reference to the effect of putting water against a bank without blasting, does it not?

A Yes

Q And against this lower blue stratum?

A Yes, where

I was piping, there were no very large boulders where I was piping at this time. There were no very large boulders.

Q But it was blue cement?
A Yes, something like that (in
dredging).

Q Was it as hard as that?

A I do not think as hard as that. We never try to cut such dirt as that.

Q How far was it from the bottom?
A Between 50 and 60 feet I should think above the bed-rock. It was kind of on the side (indicating) not directly over the channel, on the East rim like. The reason they tried to cut it, it was finer gravel and they did not know but the water might cut it.

Q You found that the water did not cut it without blasting?

A Yes. And they finally put a blast in, in some places.

Q After blasting it washed readily?

A Yes.

Q. And the water was not as clear then as when it came through the nozzle? A. No, not when the dirt was loosened up of course it is not clear.

Q. Then it comes from the bank very muddy? A. Well, it would be pretty much the color of the dirt.

Q. Pretty much the color of the dirt. A. Yes.

Q. There were great quantities of dirt of course came out with the water, and the water was very muddy? A. Yes, at times it comes be

Q. It would be owing to whether you were washing mud, or rock or dirt? A. Yes.

Q. You say that your estimate of the depth of Indian's Hill pit is 90 feet?

A. That was the first washing the top washing, about 80 or 90. I do not know exactly.

Q. What is your estimate of the depth of the pit that they

are washing in now?

A Well, it is about 75 feet
Ishmes think, some places more

I Don't you think it is more
than 75 feet? A It might
be in places

I Is it not as much as 100
feet in places? A No sir, I
do not think it is

I This is a ~~mere~~ general esti-
mate without any measurement.

A Yes, I never measured it any
where that I know of

I Now what part of the river
did you say you had passed up
here below Canon Creek?

A Well I have been from Pick-
ering's Bar down below Ross Bar
a little way

I How is that?

A I have been along the river
from Pickering's Bar for about
a half a mile below Woods
Bar, a good many times

I The balance of the way
you have not been down?

A I went over it once only

I When was that?

A That was about two months ago, I guess, as near as I can guess.

I did go over it at that time for the purpose of estimating the amount of material in the river. A well, there was a party going down and they wanted me to go along down and see if I could recognize and mark what I had seen before.

I who was in the party that was going down.

A Mr. Gmed, Mr. Carr, Mr. Van Vacht, Mr. Noyes and Mr. Harriman and there was another man, I do not know his name.

I you say that prior to that time you were acquainted with the river somewhat from a point half a mile below Peds Bar up.

I where was this deep hole that you described in your testimony yesterday, this hole 10 feet deep at one point

A It was just around the first point above where Mr. Warner lives, in fact it began at a point above where his bridge is and run up to the next point. I did not say the water was 10 feet deep, I do not think. I said we had to use about 10 foot posts to lay the stringers on, for the flume. Probably those posts would be 2 or 3 feet above the water.

Q That would be seven feet of water. How high was the water in the river at that time above the hole at that time. The water in the river was running at that time was it not? A Yes.

Q It did not all go down into that hole did it? A Yes - 2 You estimate the depth of that river at low water at that time?

A Yes. They generally commenced putting in flumes the latter part of June or in July.

Q Was the river very low at that time

A I do not think it would be at its lowest quite.

Q How much did it lack of being at its lowest?

A I do not think it would fall a great deal in the big hole, it might be a foot lower at the lowest mark. The lowest time of the water

Q The fact is that hole at the upper end was about 3 feet deeper than the balance of the river

A Yes I should think it was; probably more I should think more if anything

Q Then it run from that down to nothing. It kept getting shallower and shallower until you got to the lower end.

A That is the way the deep holes are. That is the way they generally are. I have noticed it when they were drained out

Q You stated yesterday that you did not know the depth of any other hole between there and Canon Creek? Ans, I do not know the exact depth of any of them. There is another hole, there are two others, one below there and one above but they are not as long as that one

Q You do not know the

length, depth or breadth of those holes? A No sir not by measurement. I never measured them

Q Well do you know it in any other way than by mere rough guess? A No sir

Q Do you know of any point in the river where you know the depth of the river in 1852? A The depth of the water.

Q The depth of the water the channel? A Well where it runs over a riffle there is very little depth at all. You could almost step across from stone to stone in early days

Q I mean the depth of the channel from any particular object on the sides of the hill? A Yes I do

Q Where? A At the lower end of Ford's Bar

Q At that place you estimated it to be 25 feet from the point where you

had drilled? And sir that is the upper end that is where I worked when I first went there. The bed rock rises from the river as you went up probably 75 feet from the river and it kind of run off flat. We worked up on this ridge until we came to this flat and we followed it in the flat and we got in a way and it seemed to pitch off.

Q You drilled there about 25 feet from the low water mark? A Yes.

Q And below that what do you say was its depth from any particular object - the lower end of Fords Bar?

A This was at the upper end.

Q You said you knew its depth at the lower end?

A There used to be a house there where Mr. Hamlin lived.

Q How deep was the river from that house?

Well I should think it was 50 feet or more perhaps more. I know the house stood nearly on top of the bar and I used to judge that bar to be about 100 feet from the water.

Q Running diagonally?

A But it was very steep then.

Q 45 degrees?

A It

was steeper than that in most places right at the lower end where this house was. It was not as steep at the upper end.

Q Do you know any other point in the river except these two where you know the depth of the channel from any mark on the bank?

A Yes.

Q Where?

A Just above this deep hole there was a flat bar there where we used to camp on.

Q How deep was that? A That was about 40 feet from the river.

Q That is near Ford's Bar -
A Just above

Q Do you know any other place? And sir I do not think I was as familiar with any other places as I was with that

Q You do not know any thing of any places where you have not been?

And sir, I would be a fool to say that I know it

Q What did you say the depth of the tailings at Ford's Bar was?

A About 45 feet I think

Q At Ford's Bar? A Yes it is at the upper end where the bridge was

Q And at the lower end?

A I should think it was more than that between 50 and 60

Q You put it at 50 or 55 generally? A Yes about there I do not know exactly

Q And as you go above it keeps getting less?

Oyes I think it does.
From Warner's up I think
it is. That is the upper
end of Ford's Bar and from
there it seems to grow shallower
as you go up.

Q How far is it from
Warner's to Ford's Bar?

A Warner's is above Ford's
Bar.

Q How much?

A 200 or 300 feet I think.

Q And from Warner's Bridge
to the end of the tailings there
constantly grow less.

Q Until they go down to
nothing? A I do not know
as to that. I never followed
them clear to Canon Creek.

Q How much have you noticed
to be the fall of the tailings,
that is the decrease of the
tailings per mile as you
go north of Ford's Bridge?

A Well at Peckham's Bar
I should not think they
would be more than 15 feet.
I can see some of the

largest boulders that used to lie in the river - the tops of them

Q Did you see any boulders there in 1852 that were 15 feet high? A No sir I do not think I did

Q You can see the tops of those boulders there?

A There was a kind of a flat bar outside. These largest boulders were out on this bar

Q How far is it from Warner's to Pickering's Bar?

A About a mile and a half I should think

Q About a mile and a half? A Yes

Q What was it that you made the average filling?

A From a point below Ford's Bridge as far down as I know, to take the average of it about 35 feet

Q That is a guess?

A It seems to me this is all guess work

Q There is no means of arriving at anything like an accurate estimate.

A Not unless you go and sink a shaft there.

Q There is no means of arriving at an accurate measurement of the amount or ~~then~~ to an estimate that is approximately accurate is there?

Alvord no, not unless you go and sink a shaft and measure. You have to do that to be exact.

Q That is the only way?

A Yes I would think it would be the only way.

Q Did you arrive at your conclusion as to the average per mile or the average fill by any calculation or merely by just looking at it and saying: well taking it as a whole I think there is about 35 feet average?

A That is the way I calculated. I did not make any measurements.

Q The last way you measured it? Ayes.

Q You just looked at the whole thing and then made a rough guess at it?

Ayes.

Redirect Examination

S. ^{of} Ly. Beers

Mr Byrne Q What do you call a rough guess?

A If anybody was to say: how long is this room? I would look at it and I would give my opinion how long it was

Q Speak a little louder

A If anybody was to ask me how long this room was I would look at it and give my opinion

Q Do you call that guess work? A I should call that guess work

Q Do you know the condition of the river as it originally

was, say in 1852? Ayes
 Q Were not you there?

A I was there in 1852 and
 1853 and up to 1860, I
 worked nearly every Summer
 on the river except one Summer
 I believe

Q Do you remember how it
 looked at that time? A Yes
 You now remember how it looked
 at that time? A I think
 I do

Q Do you remember how it
 looks now? A Yes

Q When you last saw it
 I mean. A Yes

Q Now your recollection of
 the appearance and condition
 of the river when you first
 saw it and as it is now
 Can you not form some estimate
 of the extent to which it
 has been filled up?

A I have already I think
stated I object to the question
 as leading and not in direct
 examination?

The Court I do not think it

makes much difference whether
he says guess or estimate, I
do not care whether he says
guess or estimate. I does not
make any difference to me

Mr Byrne If that is the
way Your Honor understands
it I will ask no further
questions

Testimony

Ferman Storvie

Called for deft sworn

Mr Ballin Q Where do you reside?
A In Mormon Island
Sacramento County

Q When did you first come
to Mormon Island?

A I got there in July 1850

Q State whether you were
engaged in mining on the
river during that summer?

A I was engaged during
the balance of 1850 & 1851

Q State whether you observed

any sand bars in the South
fork of the American river
at or near that place?

Alfred

Q If so describe the way
that was in reference to
Mormon Island?

A There was one right opposite
I remember one right opposite
Mormon Island where the
Natoma Co was cutting a
race through it or had cut
a race through it, they en-
larged it through the next
Season, the Natoma Mining
Company that is the river
claim as they called;
they had cut a race through
a sand bar right opposite
the town of Mormon Island
and let the water through it
This was in 1850 that they
let it through and it was
clear sand where they cut
through. There was a ledge
of rocks put out from the
bank I should think 200
feet where the rocks cropped

out between that and a point that run out, they cut through and made a race instead of fluming through that sand

Q Which side of the river was that bar? A That was on the North side of the river, Mormon Island is on the South side and that is on the North side

Q What is the character of the bank of the river on the North side?

A Well above that it was rock A rocky shore all along —

Q Steep or sloping? What is the character of the bank? Was it steep or sloping?

A It was a little sloping The bank was a little sloping from the main shore to that point of rocks where they cut through

Q I am speaking of the bank of the river on the other side. What kind of bank

was that. A Right opposite
 below where they cut through
 is a very abrupt steep
 rock, very little chapparal
 growing in it and very little
 soil, but this sand bank
 where they cut through was
 clear sand

Q Well what depth, about
 what depth was that bar
 that that Company cut that
 race through? A Well on the
 side towards the bank I
 should think between 30 and
 40 feet deep after the water
 got through. It cut it out
 after the water got through
 and the other side was not
 so deep. It kept sliding
 off and the bank continued
 to slope in that way and
 as the water ran through
 it left one side a good deal
 higher than the other

Q What was about the average
 depth? A Well I should think
 on the side towards the river
 on that side probably it was

not over 30 feet, and I should think on the other side is very near forty. I think it would be 10 feet difference.

Q About what was the width of it? A Well on top after it slid in I should think it was 200 feet.

Q About what length was that? A Well I could not say exactly of course about that. I should think through that 250 or 300 feet through it from the upper end through but it was not all that height. It sloped out on each side.

Q State what effect the construction of that race had on the river at that point? A Well it had the tendency to lower the water above that race. It turned the whole of the river through and lowered it on the other side.

Q It turned the river out of its course? A The natural

Channel

Q Through that channel
A Yes sir

Q For what purpose was
that done? A Done to
drain the Natoma Company
as I understand it

Q To drain the Natoma
Company? A The claim
of the Natoma Company,
their river claim

Mr. Caldwell I do not see
the relevancy of this. I would
like to have you explain.
I object to this as irrelevant.
This turning the river at
Mormon Island. I object
to it that it is apparently
immaterial

Mr. Bathin The general pur
pose of it is this: and I pro
pose to follow it up with a
few more questions: that
two or three other large sand
bars were there. On the part
of the plaintiffs here especially
in the early part of their
case they contended that

that river in early days was free from sand bar deposits and that these sand bar deposits are a modern event due exclusively as they claim to mining operations. I prove now that in 1850 - I have not identified the date but I will ask the witness and prove the date, in 1850 immediately after the winter flood of 1850 there were sand bars in the river

Mr. Caldwell Probably you had better go ahead. Your proof will be shorter than your statement. I will draw the objection

Mr. Catlin O State if you know of sand bar in the river in that vicinity, I mean now those of a large character making no reference to the small ones

A There was one right on the South side of the river right close to what is called

the town of Mormon Island
used as a burying ground.
It was a sand deposit

Q Well, I am speaking
now of the sand bar right
in the river. Alwell

this commenced right in
the edge of the river where
the water came right up
to it and cut it away,
washed it away, you could
see where the marks of the
high water were

Q What did you call it?

A I called it a sand bar
but the sand bank was very
high and they used it for
a burying ground in 1850

Q How long did they continue
to use it? Alwell they used
it till in 1852. I left there
at that time and went up
into Yuba County and I
do not know how long I was
gone but when I came
back there it was moved - the
graves were taken up

Q When you came back?

Q I was gone 4 or 5 years from 1852 - I left there in 1852 and when I came back to Mormon Island they had moved their graveyard taken their graves up and it was washed away.

Q When did you come back?

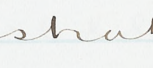
A I do not remember the number of years I was gone. 4 or 5 years before I came back. I could not tell exactly the number of years.

Q When you came back, this sand bar, this hill or bar was washed away?

A It was six

Q What was the depth of that bar say above the water, the river? A Well I say the deepest place, the deepest I know of was where I happened to dig a man out of the sand one day I think it was 30 feet at that point and I think it was of an oval line shape. There was a ravine

put in on each side of it
and in the centre it was
a good deal higher and it
ran off to each side and
there was a man got covered
up in the sand and I
helped dig him out, I
think it was 25 or 30 feet

Q I am not speaking of
the particular place where
you dug the man out
What was the general depth
of that knoll or bar of sand?
A Well it would go from
8 feet to 30. It was round
in this way  and the ravines -

Q What was the depth at
its highest point?

A I should think it was 30
feet at the highest point
close to the river.

Q How long was it? You say
it was bounded on one side
by a ravine and on the other
by a ravine? A Yes sir, I
should think it was about
250 yards from one ravine to

the other

Owells, what was its general width, about what was its width? Owells, it ran to a point in that way, and I should think the longest part of it probably was from the river back would be 350 yards

Q You say that has all been washed back into the river? A Yes

Q Now state any other sand bars near there or immediately on the banks of the river? A Well about a little over a quarter of a mile below there right opposite the Gibson Mining Claim below the bridge there was a small bar.

Q Now describe where that bridge is, describe to the Court. A I should think it was a little over a quarter of a mile from there there was a small

sand bar.

Q Describe first where the bridge is? A The bridge is probably 100 yards from this sand bar that I spoke of that was used as a burying ground.

Q With reference to the bar known as Mormon Island is it above or below?

A It is below Mormon Island.

Q Now at the point how far is this point you are about to describe below the bridge, about, you need not be particular as to the yards?

A It is about 800 feet below the bridge.

Q Well state which side of the river was this bar?

A It was a small bar of white sand. We set an engine on it to pump the claims. I should think it about 10 or 12 feet deep and probably 150 feet long where we had our engine.

Q Which side of the

river was it? A That was
on the South side of the river
Q That is this side?

A That is on the Mormon
Island side

Q Do you know what has
become of that bar?

A I do not. I left the bar
and there was another one
formed since then

Q Well is as there any other
bar there? A Yes there
was one

Mr. Caldwell Q Do you
want to prove that those old
mining bars are worked out

Mr. Catlin It was not a
mining bar. It was there
before there was any mining.

I want to prove that there
was a very large number
of bars there in 1849 before
mining commenced

Mr. Caldwell I understand
that. That is not the question,
and that they were worked
by the miners

Mr. Catlin I do not take

the admission in that form—
go on and describe the bar

A There was a bar below
this one I should think very
near a quarter of a mile
that I spoke of on the North
side of the river. It was
quite ~~as~~ and bank. It was
worked in 1850 and 1851.

That is they stripped off
from 18 to 25 feet of sand
in order to get at 2 feet of gravel
that was under it

Q To get down to about 2 feet
of gravel? A Yes sir there
was about 2 feet of gravel
between that and it paid
very rich and it was
worked by a Company of
negroes that worked there
the only Company I know of
was negroes, the Helsey
Company

Q Describe the extent of
that bar? A Well that
bar was probably 350 feet
from the river back to where
the rocks raised up, and

some earth and very small
chapparral growing on it
but it was about as long as
that in front, it is a regular
pile of sand. It was about
as long back as it was in
front on the river

Q About as broad as it is
long? A ^{yes} and running back
about as far as the front
of it was that they worked

Q What time of the year
was that in 1850 when they
worked that? A Well I
saw it in September 1850 the
first time that I was there
and there were but two men
to work there and I saw it
again in 1851 - it was in
September 1851

Q What kind of sand did
it appear to be?

A White sand, fine white
sand

Cross Examination of Ferman Stossie

Mr. Badwalades Q There were bars there in 1869 on the pines, were there not?

A Yes sir

Q They were worked out by the miners with lons and cradles? A Yes sir a great many of them.

Q They did not even spare this graveyard did they? A Well I do not know I was not there when this graveyard was worked out. I know that it was however.

Q You know they worked the graveyard out?

A I know the that ground was worked away from there, when I came back that ground was worked off by the miners I was

told, I did not see
them do it

Q Where people had been
buried there in 1850 and
1851? Ayes.

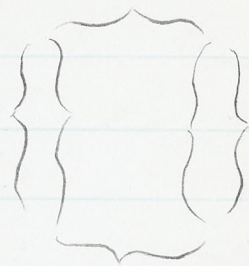
Q There had been a great
many buried there?
A A considerable many

Q They must have dis-
turbed at least 300 graves
to get at the gold under-
neath, didn't they?

A I do not think there
was that amount

Q Well about how many?
The Court, That is hardly
material

Testimony of Joseph Price



Called for defendant

Sworn

Q. By whom when did you come to California? A. I came to California in 1853

Q. What has been your business since here? A. Mining Mr. Ahally?

Q. Where first? A. The first mining I did was on the Yuba River above Down Newell.

Q. When? A. That was in the summer of 1853

Q. Where did you first mine? A. After leaving the Yuba River I came on to the American River - I mined in surface diggings on the south side of the American River at Pelot Hill El Dorado Country after that

I will you state to the Court when and where you mined

in various places up to this time.
 Mr. Cadwalader. What years
 were you at Pilot Hill?

A The winter of 1853 and 1854
 I when next? A In the
 Summer of 1854 I worked on
 Oregon Bar on the American
 river and the following winter
 I worked in the dry diggings and
 mined on what were termed the
 surface diggings.

I where? A In El Dorado
 County and in the summer of 1855
 I also worked on the river and
 in the summer of 1856, or a
 portion of the summer of 1856,
 I worked on the American river,
 at various points along the river.
 Mr. Byrne. Where next?

A Then my next mining was
 at Lost Camp, Placer County.

I What year? A In 1858,
 the winter of 1857-8 was when
 I commenced, there, work in
 tunneling.

I Proceed without waiting for
 me to ask you where and when,
 go right along and tell the Court

Where you mined. I want to show
your knowledge and Experience
at the several places where you
have been a miner in the State.

A I do not recollect whether
I mined in the summer of 1859
or not, I do not think that
I did mine that summer if I
recollect right, and then I did
no more mining from that
time to speak of until I think
it was 1868, no more to speak
of, I mined some little oc-
casionally, but none to speak
of until 1868. Then I went
in 1868 to Calaveras County
and worked in a mine there known
as the Big mine, that was a
quartz mine there. I worked
there for a short time and then
went back to Nevada County
to Meadow Lake and worked
there.

Q When was that?

A That was in 1868.

Q Have you mined since that
time, if so where?

A Since that time, most of the

mine in Placer County
 Mr. Cadevalader, at Meadow
 Lake, just state what kind of
 mining? a Quartz mining.

Mr. Byrne. In how many
 different Counties in the State
 have you been engaged in mining?
 Mr. Cadevalader. Where after
 Meadow Lake?

A In the Gold Run, Placer County.
 I What year was that?
 A I forget the year I went
 to Gold Run from Nevada
 County. That is when I com-
 menced mining at Gold Run.

Mr. Byrne. My question
 was how many different
 Counties in that State have
 you been mining in.

A Yuba, Nevada, Placer,
 El Dorado and Calaveras, I
 believe are the five Counties
 I have been engaged in.

I Do you know what the cus-
 toms of miners in these various
 Counties has always been
 Since you have been in the State
 with reference to the discharge

of water and tailings into the nearest and most convenient place of outlet? A. I do

I state to the Court what that custom has usually been?

A. The custom has universally been in all mining camps that I have been in, to get and procure the nearest and most available outlet for it, to get rid of your tailings.

Mr. Cadwalader. The custom has been to procure the most convenient outlet for the discharge of tailings. Is so.

Mr. Byrne. What has been the usage and custom in that respect in the Gold Run Mining district?

Mr. Cadwalader. We understand that in that district there are written laws and regulations, we count those

Mr. Byrne. I do not think it has been shown that there are.

Mr. Cadwalader. I speak from my knowledge of the Keyes Case, it was stated that there

were rules and regulations and I suppose they ought to be produced.

Mr. Byrne. I do not know of any

The Court. There was no testimony here in regard to any Mr. Cadwalader. You can go ahead.

Mr. Byrne. I am going to prove the universal, and general custom which prevails and which is independent of any mining rules.

Mr. Cadwalader. Mr. Byrne reminds me that it already proved in this case that there had been a meeting held in which they elected a Recorder and framed laws.

The Court. A witness said yesterday that at first they had no written rules and no Recorder of office. But 2 or 3 years afterwards they elected a Recorder, I do not know that he said any thing about rules. So on, I will take the testimony

at present any way
Mr. Cadwalader. I suppose we
 can ask him whether there were
 any rules and regulations
The Court. You can ask him
 and if he says there were rules,
 whether they were in writing
Mr. Cadwalader. Were there
 ever rules and regulations of
 manner in that Gloucester dis-
 trict? a I do not know

Mr. Wilson. I do not think
 that the question of Mr. Byrne
 at this time calls for any
 such preliminary examination
 of that question. The question
 was whether there was any
 custom in that particular sub-
 ject. He is not asked as to
 what rules and regulations there
 were at all on the subject
The Court. I suppose the proposi-
 tion is, that if controlled by
 rules and regulations, the
 custom could not be proven -
 the custom would be abolished
 by the rules.

Mr. Wilson. It will be for

them to show if we establish
 a custom, that that would be
 moving for some reason that
 they would bring out; it is
 for them to establish as a mat-
 ter of defence, to rebut it or
 overcome it. I do not want
 to be precipitated into this argu-
 ment now. I am rather putting
 it now upon the question of the
 shape in which it arose, rather
 than on the merit of the general
 question of custom. We
 shall contend and we would
 like to produce some author-
 ities as to our right to go
 in to general custom and
 usage independent of miners
 regulations, but in that is a
 broader question, and one that
 ought not to be precipitated
 here, I think; but at this
 time the witness has been
 only asked as to the customs
 prevailing there and we
 desire to get this a little
 plainer; if, that, for any
 reason is not effectual,

if they can show by some distinct, affirmative fact, that that custom can not prevail they can do it when they come to their own case

The Court. Why not ask him what he did - I suppose you can omit the general word custom which implies perhaps a conclusion and ask him what they did with their tailings

Mr. Wilson. Well, it is probably another way of showing what was the general custom and usage of miners. No one pretends that there was ever any rule or regulation covering the question of dumping and the use of water, that they were put into any rules or regulations

The Court. I think you can ask what they did with their tailings and how they used their water

Mr. Cadwalader. We make no objection to that. We propose to admit that these miners

did dump, into the nearest and most convenient stream provided they did not injure the property of any body else. Their proof could not go any farther than that. They say they do not pretend that there ever was any rule regulation or custom prescribing when they should dump or how they should work their claims and the admission that we make is substantially what Mr. Cobby said on yesterday The Court. If they do not mean to accept that, I can not make them do it.

Mr. Byrne. We do not accept it with any such qualification as is attached to it.

Mr. Cadwalader. This matter is stated in the complaint Reading.

Mr. Byrne. In the selection and locating of a mining claim, what was the first thing that a miner took into consideration

Mr. Stark That is immaterial I think, what a man took into consideration in the selection of a claim.

The Court. The question is too indefinite.

Mr. Byrne. State what the men did from the first time you have known their operation in this State to the present time in reference to the abstraction of gold, describe the manner in which they did it.

Mr. Stark Now, if Your Honor please, we object to the introduction of any evidence in this case in relation to the Customs or mining laws controlling any district other than the Gold Rush district on the ground that it is irrelevant and immaterial.

The Court I will accept the testimony at present.

Mr. Stark. We take an exception.

Mr. Cadevalader. Our point is, that it is irrelevant what the rules and regulations of any other

(C₄)

district are, unless it appears
from the answer that in the Fred
Rum district there are rules
and regulations.

Mr. Byrne I will withdraw
that question. Do you
know of any regular custom
existing in California in re-
gard to the dumping of tailings
and water out from the mines?

Mr. Hart. We object on the
ground, that the witness knows
what a custom is in the
legal sense, and that the word
custom itself is objectionable,
it is a legal conclusion.

The Court. I do not know
but the word practice would
be better.

Mr. Wilson. The question is one
that has been put a great many
times in cases of this kind.

The Court. What you mean is,
what they generally do, I
suppose. You mean after all
by the word custom, just
what you would be asking
what has been the general

practice about it. You do not mean that this witness shall speak of a custom known among lawyers as something that has become a part of the common law. All you want to know is, what was the practice. I think ordinarily there is no difference made. It is generally understood and the witness would understand it just as you would, if you would ask what is the practice generally.

Mr. Byrne Do you know of any general practice existing in California in regard to the dumping of tailings and the water from the mines

Mr. Hart. This goes in under the objection that it is irrelevant and immaterial

The Objection is overruled and we except

Mr. Byrne What was that practice and usage so far as you know of it

Mr. Codrington I move to strike

(C)
X

out the word usage that is
Equivalent to custom

The Court. I do not think the
witness understands that dis-
tinction

Mr. Hart. We will make the
same exception and take the
same ruling

The Court. I suppose the objec-
tion that you have got in mind
will cover it all

Mr. Hart. I want to get the
objection first, as to whether
there was a practice, and second
what the practice was

A There has been a practice,
there have been customs and prac-
tice in every camp that I have
mined in, in the State

Mr. Cadwalader. Do do what:

A That custom and practice
was in every mining locality
to obtain mining ground, in
the first place that a person

Mr. Cadwalader. I object to
that as irresponsible. He
is wandering off from it

Mr. Wilson. The interruption

of the witness disconcerts him and destroys his continuity of idea and makes his answer generally abortive.

The Court. Just confine your answers to the disposition of the material from the mine.

A Well, it has been the custom and practice to dispose of your material from the mine in the most available place and most convenient place any mining locality in which I have been.

Mr Byrne Describe to the Court the most convenient and available places for that purpose wherever they were situated? ² in

A In any particular locality do you mean, Mr Byrne?

I Generally. Not in any particular locality, but everywhere? A. Well,

those places were most available wherever you could get drainage from your mine or what is known as dump

What is termed dump.

I I wish you would state to the Court where these were actually or universally found?

A They even found a ravine and in Cañon.

How were these mines worked by what means - by what power

McAdams We will admit that they were worked by water

A: Some were worked by pick and shovel and the use of water, to wash the material after it was loosened, and others were worked by hydraulic process as it is termed, a pipe projecting water or throwing water against the bank and washing it down and tearing it down and washing it off Mr Byrne Where did the water go to? A It always finds its lowest place, it would go down the stream until - It was intended that it should carry off this material

Q Was there, or is there any other way or manner of working these mines of which you are speaking except in that way? A None that I know of.

Q Is it possible to work them any other way?

A I think not.

Q Give the Court an idea so far as your knowledge extends as to how general this practice was throughout the State, and how long it has continued.

A It has been the general practice ever since I have been mining and it has continued until the present time.

Q From what time until the present time? A Well, I commenced mining in 1863 the first mining that I did.

Q You say that it has continued until the present time.

A It has continued until the present time.

Q How long if you know has that same practice and usage

Existed, and been exercised in
the Gold Run Mining District
Mr. Cadwalader I object to
that

A Ever since I have been there,
Ever since I have known the
Gold Run Mining district

The Court. I do not see much
object, either in putting it in
or of objecting to it. It
seems to me you proved those
facts yourself.

Mr. Hart. We have offered
to admit these facts

Mr. Dyane. When did you
first know the Gold Run claim.
A 1873

2 To what extent had the sur-
face or top of that claim
been worked off at that
time? A. Well, it had
all been worked off the top or
comparatively speaking all had
been worked off. There might
have been here and there
a point down to what is
known as blue gravel

Q Who did that washing?

A I do not know.

Q Was the Gold Run Company then the owner of that property in 1873? A In 1873, they were the owners of the Indiana Hill property.

Q Had that been washed by the Gold Run Company or by others?

A Told on a minute. In 1873 - Mr. Cadwalader. You admit in your answer that it had been worked by the Gold Run Company since 1870.

Mr. Byrne. No, it was worked by our predecessors.

The Witness. I cannot state as to how much property was owned there. I understood that —

Mr. Cadwalader. It sets up, that since the year 1872 and up to a short time before the commencement of this action, the defendants have been engaged in working the mine at said claim by the hydraulic process.

Mr. Byrne. It does not particularly claim

Mr. Cadwalader. Yes - This particular claim, then, 400 acres. The complaint describes the size of the claim.

The Court. I understand that there are several defences, and that may be admitted in one defence and denied in the others.

Mr. Cadwalader. It is not denied at all in the first place.

The Court. They may want to prove that it was organized then.

Mr. Byrne. We desire to prove that prior to the time that the defendant became the owner of the property, the surface or top stratum had been washed away, and that until the completion of the deep tunnel which was in 1875 or 1876, no work at all by this defendant had been done on this claim.

Mr. Cadwalader. This witness says he did not know until 1872 and therefore it may

be irrelevant in that respect
Mr. Byrne. The witness will
 not testify to anything he does
 not know or as to any time when
 he was not there

The Court. My impression was
 from the answer, that there
 was first a denial and then
 some separate defences.

Mr. Cadwalader Not in this
 regard

Mr. Hart. We do not intend
 to controvert the fact that the
 top stratum had been washed
 off

The Court. If it is not a matter
 in controversy I do not
 think it is worth while, to
 spend time in controverting it
Mr. Byrne. Do you know
 when the Tunnel of the Gold
 Run mine was completed?

A I do.

I state when it was?

A It was completed in 1875
 I think - 1875.

I describe to the Court the
 difference in the character of

the mining operations since the completion of that tunnel and before

Mr Hunt. This is like the other question. That has all been proven. That since that time they have been working by the little pit there, and that before the tunnel was completed they worked it by a horse and through deep cuts. That is not a controverted fact in this case.

Mr Byrne. Will you state distinctly what you do not propose to controvert

Mr Hunt. I can not state it, unless you undertake to prove it. I think the main facts in this case are out, and that with but one or two exceptions there will be no controversy as to the facts. As to the manner in which this mining was done on the upper stratum and the mining which has been done in the pit, we proved that ourselves and you proved it and there is no controversy

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wide is it at the bottom

A. Well, the channel will average on the bottom somewhere about 200 feet I should judge.

Q I am speaking now of the pay streak as it is called there or the pay lead as it is often called. Is there a pay lead there, Mr. Price? A Yes, I think there is.

Q Why do you think so?

A Well, I have reason to think so from working there.

Q In what capacity have you done work there?

A I have been working there as a machinist, blacksmith, mining and have held the position of foreman for a short time.

Mr. Cadwalader of the Mining Claim? A Yes.

Q This Mining Claim?

A Yes, this Indiana Still Mining Claim.

Mr. Byrne. Have you been present at the cleaning up of

Page 7426 precedes this

the flume at any time.

A I have

2 How often? A I cannot state, perhaps 40 or 50, may be more at different clean ups

2 A great many times?

A A great many times.

2 What did they take out of the flume when they cleaned up.

A Well, we first took out the iron rails, when we first commenced cleaning up, after we got them out we would go to work and separate the gravel from the amalgam and take the amalgam up in buckets

2 What kind of amalgam?

A Good amalgam

2 Is that the reason why you suppose there is a pay channel there?

A That is the reason I suppose there is a pay channel there, because we get pay out of it from coashing dirt

2 In proportion to the amount of material that has already

been removed from the Gold Run district including the top washings as we have called them here, how much remains to be washed away?

A There remains to be a little mining of 18,000,000 I believe of Cubic yards

Q I ask you what proportion?

A What proportion of it?

Q Yes. Compared with what has been already removed?

How much is left?

Mr Cadwalader A R him if he knows.

A Well, there is not left I do not think there is $\frac{1}{3}$ left of it, I do not think there is $\frac{1}{4}$ left remaining to be washed

Q You said about $\frac{1}{4}$. Are you familiar with the North Fork of the American River below Canon Creek and above Reese Ridge?

A Well, I know it I know the river

Q Since when?

Q Since 4 years ago this Com-
munity Christmas my knowledge
commenced of that stream.

Q Do you know where the Forest
Tree bridge is, so-called?

A Known as the North Fork
bridge I believe the Forest
Tree.

Q I mean the bridge that
leads from Auburn to Forest
Tree that crosses the river at
that point? A I know
where that bridge is.

Q You know where it is?

A Yes.

Q Whereabouts is it with ref-
erence to the junction of Mid-
dle and North Forks?

A It is about half a mile
or less, probably a little less
from the junction of the North
and Middle Forks of the
American River.

Q When did you see it first?

A I first saw it, I can not
tell, when I first saw the
bridge, when I was first
there where the bridge now is,

On the Summer of 1856, no
1855.

What is the condition of the
river now at that point as
compared with its condition in
1855 when you first saw it?

A Well the condition of the
river at the present time for
some 5 miles of the river
from the junction up stream is
the same as it was then, about
somewhere about 5 miles up
the same as it was then,
that is from the junction of
the Middle Fork.

Mr. Cadwalader That is op-
posite Auburn nearly
The Court. How far below Rice
Bridge?

Mr. Dyane. How far below
Rice Bridge would that be?
Say 5 miles above the junction
of the two forks?

A Well, it would somewhere
between 16 and 17 miles, I
guess, somewhere not far from
that. I am not positive as to
the exact distance.

2 Do you know where Rice's Bridge is? A I do

2 Do you know the condition of the River between Rice's Bridge and Pickering's Bar?

A I do

2 Will you describe it to the Court? A Well, the condition of the river - It is filled up to quite an extent with material from Pickering's Bar to Rice's Bridge

A Not so much at Rice's Bridge. The fill is very light at Rice's Bridge

2 I wish you would state to the Court your opinion as to the average depth of the sandbars in the river from Rice's Bridge up to Pickering's Bar?

A Well, my opinion of the depth of the sandbars is from 40 to 45 feet would be the average depth of them

2 State the character and appearance of that filling?

A At the commencement of the fill at Pickering's Bar

The gravel is of a coarse na-
 ture, the material is, and as
 you go on down it becomes
 gradually finer until you
 strike the point known as
 Warner's Bridge. There is a
 filling that comes in from Iowa
 Hill or from the Iowa Hill
 divide, I should say - I do
 not know, that the claims
 they come from are from Iowa
 Hill. I think they do not
 come from Iowa Hill, but I
 am not posted there. After
 leaving that point, as you go
 on down, follow the river
 down the material becomes
 finer until you come to the
 other dumps that come in
 from other mines where they
 fall into the river and it is
 so on down all the way
 through. After leaving these
 dumps the material becomes
 finer - it is smaller character.
 I form your knowledge and
 observation of the character
 of the material in the Gold Run

mine, what percentage of it
would you say ever reaches Rice
Bridge

Objected to and withdrawn
2. I will put it in this
way then. Of the material
washed from the Goos Run mine
since the winter of 1875-6 that
is to say the time of the com-
pletion of the duck tunnel, how
much remains in the river
above Rice Bridge in your
judgment?

Objected to.

2 What has been the result
of your observation in regard
to this subject?

Objected to

2 What have been your obser-
vations, state what you have
seen and what you know?

Answer, I have seen a great
deal of material washed out
from the mine. I know it is
very heavy material, and I
am convinced —

Mr Cadwalader. I object
Mr Dyne. I object to the

witness being interrupted
The Court. The question is what
 you observed.

Mr Byrne Go on.

McAdwalader State what you
 saw

A. I have seen a great por-
 tion, a large amount of mate-
 rial in the river below our
 dumps of this heavy mate-
 rial

Mr Byrne. How much as com-
 pared with the quantity
 washed out since the completion
 on the deep tunnel in your
 judgment.

Mr Hart. I object to his
 stating his judgment. If he
 knows how much has been washed
 out and how much remains
 in the river he can state

A. I think the majority of
 material that was washed from
 that deep tunnel, lies there
 in the river

What percentage?

A. Well, I should think there
 is somewhere in the neighborhood

on 90 percent of it that lies there in the river

Q Upon what do you base that opinion? A Sample from the way we have washed from the mine.

Mr. Hart. I object to this testimony. It is immaterial the opinion of this witness The Court. I overrule the objection

Mr. Byrne. Explain in what way it is washed from the mine, and how it is necessary to wash it?

A In working this ground it is of such a nature that it has to be blasted before your water will take effect on it.

Q Well? A You have to run drifts in what are termed powder drifts, and we charge them with powder and explode them, and after you have exploded your bank blast then you have to work up all these coarse pieces, a large majority of them by hand

labor with a hand drill and also blast them, and after blasting them smaller pieces you have to follow with a sledge and gad and work them up until they become so small - until they become of a size that you can pass them through your flume or tunnel and it is of such a nature that it is very hard to get rid of it through your tunnel. It is so heavy that it will clog in the bottom of the tunnel. The bottom of your flume and some times we have to run there for hours and let it run out so as to clear the flume, that we have to run clear water for an hour at a time to let the flume clear.

20 What is the effect of projecting a stream of water against this bank which you have been describing without previously having blasted it? 20 What is the effect?

Q Yes? A The effect is nothing, you can not coast it without blasting it. It is so hard that you can not make any impression on it.

Q What is the appearance of the water that comes away from such a bank after it has been thrown against it?

A The water that come away from it is clear, it is about as clear as it was when it left the nozzle. I have seen that water as clear coming away from the bank, as when it left the nozzle going to the bank.

Q For how many hours at a time have you seen such a stream projected against the bank ineffectually?

A I have seen it for a half a day at a time.

Q What quantity of water?

A Well, all the way from 500 to 700 inches.

Q Under what pressure?

A Somewhere in the neighborhood of

370 or 375 feet, somewhere along in there

Q Describe to the Court with what force that water leaves the nozzle and strikes against the bank generally?

A Well, it is projected against the bank with great force

Q Immense force isn't it?

A Immense force. Sometimes you will see it strike, it will catch onto a seam of pretty hard rock and it will open the rock, it will split the rock where there is a seam in the rock, it will flake it off. I have seen that-

Q But still it will have no effect on the cement?

A But still it will have no effect on the gravel

Q Now from your experience as a miner, in reference to the washings of the cob material which was washed prior to 1875 and 1876 as you have stated how much more would then be washed than

Can at present be washed of
this bottom material with
the same quantity of water.
A well, there could be at
least ten times more of it
washed.

I Give you reasons for thinking
up so. The a My reason
for thinking so is that the
material on top is so much
lighter and finer than this
material in the bottom.

I Any other reason? What
Effect does the difference in
the grade of the sluice have
upon the quantity of material
that can be moved?

A Of course it makes a great
difference, the grade of your
flume. You take a flume on
a quick grade and one on
a bench grade and you will
move a great deal more
with the same head of water
on the quick grade than you
will on the bench grade.

I What were the old grades?

A In the district, you mean?

Q Yes. In working the top stratum of the Goose Run district? A I need not say of my own knowledge what the grades were.

Q What percentage do you say of the bottom channel is rock? Or did you say anything about that? A I have not said anything about it.

Q What percentage of it is hard rock? A My opinion is that from the first 60 feet or about 60 feet from the bed-rock up, there is fully 90 per cent rock.

Q 90 per cent?

A Yes, I think so.

Q Is there any pipe clay at the bottom stratum or what you call the blue gravel?

A No sir, there is not.

Q There is not? A No sir.

Q You know that do you?

A I know it.

Q Were you ever on the South Fork of the American River?

A I was.

I When? A I was
then in 1861 and 1862

I Do you recollect ever seeing
a land slide on the South fork
of the American? A I do

I Describe it to the Court
where it was, and its extent,
and what became of it?

A I was at the McMurphy
station in 1861, and it was the
winter 1861-2, I cannot now
say whether it was in 1861
or 1862, but it was in that
winter, and while we were
there there was a slide started
from the mountain, on the
South side of the river and
came down with immense
force into the river. It car-
ried a large amount of earth
and material with it. How
far it was from its starting
point to the river I cannot
not say, but I have heard
it estimated at four miles.
But whether it was that or not
I cannot not say. I judge
it to be from 100 to 200 feet in

width, and it blocked the
 river to such an extent - to
 about the depth as near as
 I could estimate it some-
 where in the neighborhood of
 125 feet, I judge, it was some-
 where in the neighborhood of
 125 feet, and that formed a
 dam across the river.

I mean that it backed
 up the water 120 feet back.

After, I mean that the water
 had to raise 125 feet before
 it went over this material.

I know how far back did it flow?

A It flowed the water back
 some two miles or very
 near two miles.

I have stated the width
 of it I believe? A The width
 of it?

I the width of the slide?

A The width of the slide and
 the course of the slide was
 in the neighborhood of 100
 or 150 feet, I judged
 by looking at it, I never
 went over the ground after

The slide was there. But I looked at it from the opposite side of the river and I should judge from its appearance it was from 100 to 150 feet

2 And what depth?

A Well, as I say I could not state. Some places it seemed be deeper than others. I could not state as to the depth of it for I never went and made an examination. A large portion of it when the dam got free broke loose and a large portion of it went off, but it had not all gone when I left then the last time I saw it.

I know doing at that section. The flow of the river? A about 4 or 8 hours.

2 And it backs the water back about 2 miles to the depth of about 125 feet?

Algas

Q What if anything do you know about land slides on the North Fork of the American River? A I have never seen any land slides on the North Fork of the American River. I have seen snow slides carrying the material with them.

Q You remember the winter of 1875-6 as to whether it was an exceedingly stormy season or not?

A I do.

I will describe it.

Q It was what we term a very wet winter?

Q What you call a flood season?

A The streams were very high, yes, it was what is called a flood season.

About it

Mr Byrne And as to the Character of the material and all that.

Mr Cadwallader you can go into the Character of the material.

Mr Byrne Describe then the Character of the material in this portion of the mine that has been worked and which will be worked through the deep tunnel?

A The material is of a heavy Character, it is what is known as the blue gravel of the blue lead, it is of a blue Character and is of a heavy Character.

Q Describe it a little more definitely if you please?

A It is composed of heavy rock and gravel smaller on the top but as you get down to the bed rock the rock increases in size and the gravel increases

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in Coarseness and the sand gets coarser and heavier that is contained in it And the rocks are of a heavier nature as you get to the bed rock.

Q How large are some of the boulders and rocks that you have seen there
A Well I have seen many a boulder in the mine that is all the way from 12 to 15 feet across the surface and probably from six to eight feet thick.

Q Of what material are those boulders composed?
A Well they are composed of different material, they are different kinds of boulders some of them. I could not give you the name of the rock as I know of still I think they are slate - called slate, termed slate. There is ~~is~~ but very little granite I have never seen any

large granite boulders there
I have never seen any granite
boulders as I know of there.

Q Are they hard or soft?

A They are very hard.

Q What means are employed
to remove them - to move them?

A You would have to go and blast
them and break them up, blast
them first and then break them
with a hammer - break them
up with sledges until they
shred get of such size that
they could be removed by the
water and carried down in the
ground sluice and then into the
tunnel and from the tunnel into
the Cañon.

Q How deep is the present Cañon
remaining to be worked

A I think it will average -
I believe it will average about
somewhere in the neighborhood
of 120 feet.

Q 120 feet, did you say?

A 120.

Q And how wide is the channel
at the bottom say? How

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Cross Examination of Joseph Price

By Mr. Caldwell Q. This South fork of the American river only remained choked for 200 hours from this immense slide and then it ran along as it had been in the habit of running for several centuries I suppose? A. Well it was running the last time I saw it.

Q. That gave you some idea of the power of the water did it not from the fact that in 48 hours it had cut its way through such an obstacle as that great land slide. After the water had filled to the top of the slide it ran over it and it wore its way down and wore it out. Q. And that stuff was all carried down stream by the operation of the water was it not? A. I supposed it

was carried down stream

Q That gave you a great idea of the power of the water of the South fork of the American river didn't it?

A Well it did not give me any particular idea of the power of the water

Q That could not have been done by 10000 men with picks and shovels in 100 years could it?

A Well I would have to figure on that before I could make that answer

Q The South fork of the American river is a much smaller stream than the North fork? A It is up there. It is smaller than our North fork is where we are

Q These rivers are practically irresistible are they not when they get high. Nothing can stand before them? A I think not.

Q You think not? A I do

Q Do you ever see a bridge stand when the

water came up into it in any of these rivers?

Q If you would move a mountain into one of those streams I do not think the water will have any effect on it.

Q That is not the question I asked you? A You said practically irresistible.

Q My question was did you ever see a bridge after the water got up to it?

A That was the answer I made to your question after your bridge question.

Q You did not answer the other question and I ask you another one: what better idea would you want of the force of water than this American river stream moving that great slide out of the way which you say was 3 or 4 miles long?

Q I do not think the slide in the river was 3 or 4 miles long.

I said the slide from the top of the mountain was estimated that it came down 3 or 4 miles

Ogden intended to convey the idea that it was an immense mass of material that made a dam in the river 125 feet long?

Artes.

Q And that at the end of 48 hours the water had washed it all away?

Ans yes

O The water was running over it? A The water was running over it.

Q And the American River was running down stream as it had been in the habit of doing for centuries? A Well I was not there a century ago

Q I suppose that material that went down was very light stuff and that there were no cobble stones in it? A I could not say what it

was composed of

Q There was not a rock in it bigger than a hen's egg?

A I made no examination but I suppose there was coming from where it did

Q You never heard of the river being permanently obstructed there did you? And is not permanently

A I suppose you know that for 10 years it was considered practically impossible to put a dam in any of those rivers without having them made of stone and locked in the bed rock

A I know there have been dams constructed in those rivers

Q I mean in the first 10 years that you were on the river whether it was not considered practically impossible to build a dam in any of those rivers without they were made of stone and locked in the bed rock

Q I have seen dams made of timber

A I am asking you about the first ten years whether or not it was not considered impossible? A In the first 10 years I have seen dams made of timber

Q Did you ever know of any dams being washed away there? A I have never known of any dams being washed entirely away. I have known of dams breaking but have never known of any being washed away

Q When a dam is broken it is gone? A A portion is gone it is not all gone

Q There cannot be anything done with it until the next low water? A Well that would be owing to how much was gone whether anything could be done whether any repairs could be made

Q What washed the dams away? A Well I do not

Suppose it was dry dirt that washed them away

Q What washed them away?

A You must have a liquid in order to wash any thing away.

Q What washed the dams away; was it water?

A I suppose it was water

Q The flood water?

A Yes that is what broke these dams

Q Now would the flood water meet with more resistance from these dams than it would in a bank of very cobble stones say as high as the dam and pitched in loosely with sand - which would offer the most resistance?

The Court This Witness has not been considered as an expert

Mr. C. W. Aladen Q Do you know the grade of the North fork of the American river below Canon Creek down to Rues bridge?

A The breadth of it?

Q No the grade of it.

A No sir I do not know the exact grade

Q Do you know the grade of the American river at Rice's Bar? A No sir I do not

Q Do you know the grade of the river where you found the Canon clear the first 5 miles above the mouth of the middle Fork?

A I do not know the grade of that

Q In those parts of the river you found nothing in the way of deposits?

A At what point are you speaking of?

Q Day between Canon Creek and the head of Peckers Bar
A There ~~are~~ but very little deposit there from the mouth of Canon Creek to the head of Peckers Bar

Q How much material has been put in there?

A I could not tell you.

Q What has been the character of the material that has been put in there?

A Well there is a larger portion of the material which has been put in there - a larger portion of it is of a light character

Q Very light? Crises

Q Well take the low water season in that river what action does the water have upon the material that is put into Canon Creek?

A It washes it down to the head of Peaberrys Bar and distributes it along the river and it rolls it over and smooths it

Q How much greater is the force of high water than that of low water? A I could not tell you what the difference is of the force of it

Q How many pieces of conglomerate rock or that cemented material did you see above Rice's Bridge when

you were there last?

A I do not know as I seen any.

Q When were you there?

A I was there in October last.

Q How? A In October last.

Q October last? Any is

Q Who went there with you? A I went down with half a load, Mullren and his son, Mullren's son.

Q How long were you there, between Rice's bridge and Pickering's Bay? A We were there about a day and three quarters. It was not quite three quarters of a day but it was a little over a day and a half.

Q And yet you saw no material there that you call cement? A I did not notice any material there that I would call cement.

Q You were there to notice these things were you not? A Not specially for that purpose.

Q What were you there for
 A I was there for the purpose of surveying the river and for measuring - making measurements

Q What did you do? Did you drag the chain?

A I do not understand you?

Q Did you drag the chain?

A I dragged one end of it

Q Does or does not this material become disintegrated before it leaves Canon Creek - by the time it leaves Canon Creek, I could not state where this disintegration takes place of this material

Q If there had been any there you would have seen it in your survey would you not? A It does not necessarily follow that you would see it it being of a heavier material than the lighter material it would naturally sink and become covered up with the lighter material

Q Are not hydraulic mines so constructed as to disintegrate all the material?

Ans no they are not.

Q Is not that the object?

A The object is to get out as much as possible.

Q Are they not constructed with that view and don't they regulate the grade of their sluices so as to prevent any thing from going off that would have any gold in it?

Ans no they do not.

Q They do not? Ans no.

Q The gold, I suppose is the finest part of the mass isn't it?

A It is finer than these rocks are most undoubtedly.

Q Without you disintegrate the material you cannot get the gold can you? Ans you cannot get it.

Q Do not hydraulic miners regulate their grades and the quantity of water to produce a perfect disintegration before the material is abandoned

by them before the material reaches their dump? A I do not know as I understand you well as to whether on regulating the grade

Q Well take this. State what represents? < presenting paper to witness >

A The way that is drawn there it looks to me as if it represents more of a cornice than anything else. Some such work as this is < pointing at ceiling >

Q Give your imagination a little flight. Tell us what that represents, at the bottom?

A Well I could not do it.

Q I will ask you whether that is not a cross section of the flume, of the Gold Run flume? A I do not think any miner would recognize it as a cross section of any part of the flume? I could not know

Q Show are the railroad bars put in the bottom of that flume

a in different positions. In different ways. In the first place in filling our flume or in placing the railroad bars in there the false bottoms we cut them to equal lengths; that is we will cut a section —

Q Never mind that I don't want that. How are the railroad bars set in the flume across the flume or with it? A Set generally with it, sometimes across.

Q Generally with, but sometimes across? A Yes.

Q How much wider is the base of a railroad bar than the top of it? A It is about not far from an inch and three quarters — not far from that.

Q The top is narrower than the bottom? A Yes.

Q Are these rails set close together at the bottom?

A They are set close together at the bottom.

when the rails are set as
in a railroad track but
when the rail is inverted
they are not so close at the
bottom

Q Don't you know that they
always leave interstices between
the tops of the rails? Ayes

Q And the bottom of the
flume is like that is it not?

A Yes sir it is not.

Q I mean a cross section of
it. Take and saw off a
cross section of the flume
It would look that way wouldn't
it? Ans sir. I do not
know whereabouts you could
saw a section of the flume off
iron and steel and make
it have that appearance.
I do not see anything to represent
a flume there

Q What kind of rail is it?
a T or a U rail?

A I do not know as to that

Q Is it such a rail as
the Central Pacific uses?
Ayes.

Q That is 5 feet wide isn't it?

A What is?

Q That flume of the Gold Run mine is five feet wide?

A Some of it is and some is not.

Q How wide is it generally?

A There is a portion of it 5 feet the lower flume is 6

Q What grade is it set on?

A A portion of the lower flume is 6 inches and a portion $6\frac{1}{2}$ I think. I will not be positive as to that but I think that is it.

Q That is a very low grade isn't it? A No sir. That is not necessarily a low grade.

Q It is a little lower than usual? A I think not.

Q Now does the Gold Run mine collect any gold below the mouth of the tunnel? A It does not below the end of the tunnel. The Gold Run mine does not own it. It is taken up by other parties

Q I will ask you whether the first force to break up a bank is not powder?

A Sir?

O Whether the first force used to break up that bank is not powder?

A That is the first force used

Q Then the little giant is used to break the bank down.

Ans Sir

Q Then the little giant is used to sweep the bank into the drop, and then it drops how far?

A I do not know as I can state exactly. There are a succession of drops

Q I mean from the top of the pit to the tunnel, how many drops are there?

A Well I could not state how many there are. There are a succession of drops.

O What is the character of the drop from the bed rock down to the tunnel?

A It is in the neighborhood

of 15 feet I think

Q Only 15 feet? A About 15 feet

Q From the bed rock of the pit? A From the bed rock of the pit

Q To the head of the tunnel? A To the head of the tunnel

Q Only 15 feet? A Mind you, this bed rock in the pit is cut down in a deep rock to the bed of the tunnel

Q I mean through the drop
A It runs in a deep cut where it intersects the tunnel and from the bottom of this deep cut to the tunnel is somewhere in the neighborhood of 15 feet

Q Now what condition is that cement in when it leaves the tunnel? A I could not tell you

Q Have you ever been to the mouth of that tunnel when you were working there as foreman

A I have been at the mouth
of the tunnel and through the
tunnel

Q How long were you fore-
man there of the Gold Run
mine? A The last time
I was foreman for a month
or nearly a month

Q What year was that in?

A That was in 1879

Q 1879 when were you
previously a foreman there?

A I acted in that capacity
in 1877?

Q For how long?

A Well for a couple of
months I think it was in 1877
I am not positive. I think
it was in 1877

Q Before then you had not
been foreman. Ans yes

Q You had nothing to do
with the mine. A Nothing
more than one of the laborers
in the mine

Q You did the blacksmithing
for the mine?

A I have done blacksmithing

in the mine

Q Where at — where was your shop at Gold Run. And

Q Where at? A In the mine

Q How long were you blacksmithing there?

A I have been blacksmithing for the mine I think constantly for I think the last 3 years or about that time

Q For about 3 years

A Prior to that —

Q Where has your shop been?

A The shop is situated in the mine in the Gold Run Mining District

Q When with reference to this pit? A It is in the bottom of the pit

Q In the bottom of the pit? A Yes

Q You did not work there the whole year did you? Where is your shop after you quit work and get through? They worked this mine 5 months only? A The shop is in the bottom of the pit

still

Q Where do you work during the other 7 months of the year?

A Well I have worked for the last 2 years in the mine with the exception of the last 2 or 3 months I have not been at work

Q You have been doing what kind of work in the mine?

A Blacksmithing and taking charge of the powder drifts when they were run and doing the sharpening for the powder drifts

Q Do you know how many drops there are in Canon Creek from the mouth of the tunnel down to the mouth of Canon Creek? A I do not

Q Do you know whether Kinder runs this same material through an under current?

A He does

Q These under currents are always set on a less grade than a tail race are they not?

A No sir they are not.

Q Are they set on the same?

A The undercurrent is generally set on more grade than the flume is set on or what we term a tail race.

Q How is Kinder's?

A Kinder's undercurrent is 12 inches ~~to from~~ the box that is 12 inches to 12 feet or an inch to the foot that I think is the grade of his undercurrent of I recollect right and I think I do.

Q How far is Kinder's undercurrent from the mouth of the Gold Run, from Canon Creek? A He has one inside current right at the mouth, or comparatively speaking at the mouth. It may be a few feet from it.

Q What is the condition of that particular cement there, that hard mass after it comes out of the Kinder undercurrent? A I could not say.

Q You do not know how it comes

out? And so

Q What is the condition of that cemented material when it gets into the American river from Canon Creek? A I could not state what the condition is when it gets into the American river at Canon Creek

Q How did you see any of it between Canon Creek and Peckham's Bar?

A I have not. I have not seen any of the cement

Q Is this a fair sample of what is called the lower stratum of cement that is blue gravel < referring to No 1 > ?

Answer it is not a fair sample

Q It is not? And is it is not.

Q What do you call this sample in the box? A I call this the top stratum or surface.

Q What do you call this? < No 1 > A I call this the bottom stratum or blue cement

Q That is what you call blue cement? A That is what is known as blue cement among miners

Q And this in these two boxes is the stuff above?

Answer Lays above

Q What lays above? Ayes.

Q And this is called the blue gravel < referring >

Answer is this is not

called the blue gravel,
that lays above the blue
gravel

Q But I ask you whether
this material in the two
boxes is not that which
lays above that? A Yes
sir that lays above that

Q How deep are you willing
to swear that this material
is on the bed rock? (No. 1.)

A It varies in depth
this material does. It
is not a uniform depth
on the bed rock?

Q Well nobody said it
was — did you see Mr
Wren's cross section of that?

A Of this material?

Q Yes sir. A No sir
I did not. I did not
know there was a cross
section

Q How do you know how
deep that is that blue
cement? A From what I
have worked there I judge
how deep it is

Q Well how deep do you judge it is? A It will go from 15 to 25 feet.

Q Well we have got down to 15 feet now?

A There are places that may not be over 15 but more of them that would be over 25.

Q Well has that been worked out or is it lying there on the bed rock? That heavy blue cement, has it been worked out or is it lying on that bed rock? A There has some of it been mined out.

Q Well how much?

Q Well, as to just how much I could not state.

Q Is not the greater part of it lying there?

A That heavy material?

Q Yes sir. A Now of the pit that we have worked off.

Q Well I mean in the pit that you have worked

off is not the greater part
of it ~~lying~~ there?

A It is not

Q How much of it is lying
there that 15 or 25 feet
deeper than you speak of?

A That I could not state
how much

Q Well give us some idea
we want to get at the
facts of this and as we
are down pretty near the
bottom we want to get
the bottom facts?

A I could not state how
much is lying there

Q You never measured
did you? A I never measured
the amount that is lying
there

Q You know that the greater
part is lying on the bed
rock? And is not of
the pit that we have washed
off

Q Well how much of the
bare rock - how much of it
is washed off the bed rock

Well I could not state. I never made any measure of how much is washed off and I could not make an estimate.

Q That is the kind of material that you gave Mr Byrne your opinion it would not go below Rice's bridge is it not?

A I do not think scarcely any of it would go below Rice's bridge. I am satisfied in my own judgment it would not.

Q Of that 15 or 25 feet?

A Of the 60 feet of the bottom —

Q Well never mind —

Mr Byrne Answer the question.

A I do not think of the 25 feet — the 15 to 25 feet, I do not think there is any of it comparatively speaking that would go half way to Rice's bridge.

Mr Leadwala Well, do you know?

Mr Byrne What was it about
 the 60 feet that you started
 to answer? Allwell is
 is all of a heavy material,
 but as I stated before
 in my answers to questions
 asked me, that as you get
 down to bed rock the material
 becomes of a coarser and
 heavier nature as you go
 down.

Mr Leachwalder Well we
 put your hand on those two
 boxes and tell us whether
 that stuff would go below
 Rice's bridge or not, the
 material in the two boxes?

Allwell there is a portion
 of it I would not say that
 all would go but the large
 majority of them would go
 the large majority of this
 would go and also of
 this < the two boxes > There
 may be a very small portion
 that would not

Q The large majority then.
 Now have you been in the

river, between Canon Creek
and Rice's bridge, except
on this occasion?

A I have

Q When? A Four years
ago this coming Christmas

Q The water was higher
then was it not? A No sir
it was not, the water was
at a lower stage then than
I ever saw it before
in the river

Q Where were you? A I was
in the river - on the river

Q Whereabouts? A From
Patterson's Bar downward,
from the mouth of Canon
Creek down the river

Q You went down the river?
How long were you going
down? A I was down on
the river all day

Q What were you doing?

A I was prospecting

Q There was no deposit
there was there? interfering
with the prospecting?

A I was prospecting

the tailings to see if I could
get a place that would pay
me for washing and working
over

Q You were there a day?
A I was there a day pro-
specting?

Q Well, had you been there
before or since until October
of this year? A I had not
been there before

Q You have not been there
since except in October of
this year? A I have been
there 2 or 3 times since.

Q Name the times A I
could not give you as to the
date

Q At any time did you
find any large deposit
between Canon Creek and
Pickering's Bar? A Not so
large as it is now

Q Not so large as there is
now - well while you
were making that survey
you came to the conclusion
that the deposit from the

head of Pickernings Bar and Rice's bridge was about from 40 to 50 feet but you say you do not recollect seeing any of that cemented material.

A I have not said anything as to the depth of the deposit between there as I recollect.

Q I thought you did.

A I do not remember making any statement of that kind.

Q You do not know what it is do you? A I have made an estimate of what it is, what I suppose it is.

Q I want to know whether you propose to swear what it is? A I propose to swear to the best of my knowledge what it is.

Q You never measured it did you? A Verily, no I never measured it.

Q And now you refer to the time that you were there with Willgren?

A From my knowledge of

the stream I should estimate it at 40 feet deep or 45 - from 40 to 45

Q Did you ever have any trouble getting that material in the boxes there through the tail race? A We do

Q Of the fold Run? A We do

Q I mean in the boxes

A This material in the boxes, this light material? <referring>

A Yes sir A Well as to that I cannot state, from the fact that there has been none of it, comparatively speaking none of it washed since I have been there, of this top surface

Q You do not know, you say, whether there has been any washed of the bottom do you? A I did not state that

Q What did you mean when you said you sent 90 per cent of that heavy material, meaning that

blue cement mass in the river between Rice's bridge and Pickering's Bar.

A I did not say this Composes 90 per cent of it there. I said that I estimated 90 per cent of it would not pass Rice's bridge

Q But as a matter of fact you did not see any of it?

A I did not see any of it in that character, that way.

Q You did not see blocks of cemented material?

My supposition was this: that that being so much heavier than the finer material that it would naturally settle and the finer material wash over which would obstruct a person's sight and a person would have to dig to prospect for it

Q Now at any dump between Rice's bridge and the head of Pickering's Bar

did you see any deposit
that raised ~~to~~ the bed of the
stream more at the bottom
than any place else in the
stream? A There are
some dumps there of that
character

Q Well was not the bed
of the river smooth clear
across? A Yes comparatively
speaking the bed of the
river was - there was a
deposit from the opposite
side of the river coming
down on the Cañon

Q Is not that river graded
splendidly? Is not there
a splendid grade in the
river from the mouth of
Cañon Creek to Rice's
bridge? A I told on a
minute I haven't answered
that former question, those
dumps that are coming in
from those gulches and
Cañons along the side of
the river they form into
a bank in this shape

where they run in <illustrating> they always tapered gradually down stream and ran off somewhat on a level up stream - they do not flow as far up you know, they are crowded, they do not flow, they are crowded in from the material above, and it will be a natural declivity from the side from which those canons come in to the opposite side of the river but to no great amount.

Q About setting the water back? A I should judge there would not be much setting the water back more than it would have a tendency to produce more of dead water back, to break the channel.

Q But as a matter of fact there is no dead water above any of those dumps that you ever saw? A I have never seen any dead water, that is to say dead water above those dumps

Q You have seen no interruption in the grade from the mouth of Canin Creek down to Rees Bridge?

A The grade is not Equal - it is not even

Q Is it not about as even as a grade is ever made by nature? A Well, as to that I cannot say, Mr. Cadwalader

Q Would not you find even the stones graded -

A You find level places that are perfectly level

Q Are not even the stones graded according to size from the head of Pickenys Run down to Rees bridge? A As I said before at those dumps -

Q [Int?] Well, say yes or no, are not the stones graded according to size from the head of Reckings Run down to Rees Bridge?

A They are graded - they are graded from each dump

Q But I ask you from the

head of Pickett's Bar, down to
Rees bridge? A. It's all
on, they are graded but let
me explain.

Q Say yes or no?

A I have answered the question
yes.

Q Well, I will give you a
chance to explain, just say
yes or no? A I have
answered yes, and now I
wish to explain. The rocks
at these dumps, this gravel
and coarse material at the
dump and heavy stones, as
you go on down the stream
they become smaller, they be-
come of a smaller character,
and you will find them con-
tinuously smaller gradually
smaller on down, and finer
material till you come to
another dump, which comes
in and then the material is
coarse again and as it
goes on down it becomes finer
and so on down in succession.
With the dumps there.

Q Now answer my question
whether the material, the cob-
bles in the bottom of that stream
are not graded regularly and
evenly by the water?

A I can not answer that
question, I have never been
in the bottom of that stream.

Q From the head of Pickens
Bar down to Rees bridge?

A There is a grade to the
river of course.

Q Well, now, are not the
cobblers graded according to size?
The Court. It seems to me that
he has explained that fully
and you probably would not
get him to say any thing else.
Mr. Codwalader At Rees bridge
you say there is no deposit?

A No, I did not say that.
I said the deposit was very
slight at Rees bridge.

Q The deposit was very slight.
When you said there was 18.
000. 000. Cubic yards to be
washed away, did you cross
the railroad? A No, in

Q. Did you make any measurements? A In connection with others, I helped to make measurements and I would state here, that my estimate of the amount of material that yet remains to be washed away. Based on this, that after making our measurement and figuring up we were figuring the number of yards at that time, I figured the amount that yet remained in the channel. That is all the figuring I have done on it.

Q. You do not think the mine then is of much account, do you?

A I did not state that.

Q Well, you say there is over $\frac{1}{4}$ of the 18000. oas to be washed away? A No sir, I did not state that.

Q Did not you say, there was only $\frac{1}{4}$ of the 18,000,000. that could be washed away.

A I did not state that.

Q What was it you said?

A I said that there yet re-

named about 18,000,000 cubic yards to be washed from that Channel of the Gues Run Ditch and Mining Company.

I will now, what did you say about the $\frac{1}{4}$?

A I said there did not get remain more than $\frac{1}{4}$ or somewhere about $\frac{1}{4}$ of the whole material, is the way I spoke.

I That was the way. There was 18,000,000 cubic yards to be washed away before you came to the railroad, that was your estimate 18,000,000 to be washed away without crossing the railroad?

A Without crossing the railroad

I That bank you say is 180 feet deep and that heavy cement from 15 and 25?

A The bank I think will average through to my recollection about 120 feet

I And you have given the depth of that blue heavy cement as from 15 to 25 feet?

A No, I have given you the heavier material which comprises a great part of this (No 1) - of which this comprises a great part, the heaviest material, the bottom stratum of 60 feet, but it is much heavier as you go down. As you go down it increases in depth, as you go down on the Channel

Q You went to Gold Run in 1873? A Yes sir

Q The top was all washed off down to the blue gravel?

A Comparatively speaking it was all washed off down to the blue gravel.

Q You say that you have been in dry diggings and in bar diggings and in hydraulic diggings? A I have

Q And the practice was for miners to do about as they pleased with their tailings?

A The practice was to look out and hunt up the most available place for your

tailings.

Q In the dry diggings the tailings were kept on the spot were they not?

A No sir, they were not. What is termed dry diggings -

Q You never knew any miner to claim the right to cover another miner up?

A A miner always claimed the right of going through the ravine. That is the universal custom in any mining location where I have been.

Q Well, I did not ask you about that. I asked you if one miner claimed the right to cover another one up with his tailings? A Well no, he does not. A miner does not claim the right to cover another miner up.

Q In other words, while you were a miner, you respected the rights of other miners, didn't you? And your rights respected?

A The regulations of those

Communities govern that,
the usages always guarantee
the privilege of an outlet—

Q. Just repeat my question.

Question repeated

Mr Byrne Ask The Court
that the Attorney shall allow
the witness to answer the
question

The Court. Yes, and complete
your answer

A It always grants them
the privilege of an outlet
in any mining community that
I have ever worked

Mr Cadwalader This is through
ravines

A It would make no difference
whether through a ravine, canon
or river, wherever an outlet
might be.

Q Did you ever know of a
regulation requiring mines to be
worked in any particular way?

A You mean, in the mode that
a mine should be worked?

Yes sir.

A I never did
I think were always at liberty

I suppose to adopt any mode they see fit? A. The miner always worked their ground I just look at me, and answer my question? A. I can look at you?

I My question is a very simple one? A. They were as far as I know. I never knew of a miner being restricted to any particular mode of working their claim.

I Having regard to the rights of other miners, I suppose — Having regard to the rights of other miners? A. I have already answered that question, as I understand it.

I Well, that is the way you understand it, don't you?

A. I have already answered it that that was governed according to the custom of the mining district, the custom and usage of the district.

I Did you ever know a custom in any mining district which required any mine to be

worked in a particular way?
 A I have answered that question
 I well, how? A The answer
 will tell you there

I well, answer it again please?
 A That I did not

I you never heard of any such
 custom of that kind, did you -
 you never heard of any such
 rule, regulation or custom of
 that kind? A I did not

I On the bar was there any
 regulation requiring miners to
 deposit their tailings in any
 particular place?

A In no bar that I ever
 worked on.

I. In dry diggings was there
 any rule, regulation or custom
 requiring the miners to deposit
 their tailings in any particular
 place? A None that I
 know of

I you worked in Itago dry
 diggings near Pilot Hill?
 A No sir

I you spoke about the Pilot
 Hill dry diggings?

A I spoke about the Pilot Hill range, but I did not speak of the dry diggings

Q Where were you working?

A Most of the time on what is known as Pilot Hill Ravine, a portion of the time on what is known as Norton Ravine, and a part of the time on Fairbank Ravine, and a part of the time on what is known as Hastings Ravine, and part of the time on what is known as Pittsfield Ravine

Q Dry were all dry diggings were they not? A Well, they were dry ravines when there was no water in them

Q Well, there was no water then in the summer?

A There was not as large an amount of water as in the winter

Q Well, I will get at it this way, these diggings were called dry diggings? A They were called dry or hill diggings

Q They were so called in contrast

distinction to river or bar dyings.
 Did you see any dry or hill dyings
 ever know of a rule regulation
 or custom requiring miners to put
 their tailings in any particular
 place? A There never exists
 my knowledge

Q In hydraulic dyings do you
 ever know of any rule, regulation
 or custom requiring the hydraulic
 mine to deposit its tailings in
 any particular place?

A In any particular designated
 spot?

Q In any particular place?

A I never did, that is more
 than a regular outlet, they were
 not compelled to dump in any
 particular place. The mine re-
 quires an outlet and it is going
 to dump its tailings in the most
 available place, the most a-
 vailable outlet

— " —
 Here a recess was taken
 until 2 P.M.

In the Superior Court
of the State of California
in and for the County of
Sacramento

The People of the State of California	} Afternoon Session Wednesdays Dec 21/81
vs. The Gold Run Ditch and Mining Company	

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Winfield J. Davis
Official Reporter

In the Superior Court of the
State of California in and for
the County of Sacramento

The People of the
State of California

- vs -

The Gold Run Ditch
and Mining Company

Wednesday
Decr 21, 1881.

Afternoon Session

Testimony

of
Joseph Price

Cross-ex < Resumed >

Mr. Caldwell I have only
one question to ask you:
What business were you in
from 1858 to 1868 — You
said you did no mining
to speak of? A well
not to speak of; my occu-
pation was varied during

those years

Q You said you did no mining to speak of between 1857 or '58 and 1868?

A I have mined some and worked some on ranches in the mountains

Q But you stated you did no mining to speak of.

A That is what I say now from 1858 to 1868

Q Well what was your occupation that is what I want to get at, during those 10 years?

A I tell you my occupation was varied - different occupations

Q Well what? A I don't know as I could state all I did do

Q Well what principally - blacksmithing? A I worked at blacksmithing some, I worked on ranches some, that is in the mountains, and drove stage some

Q Well in 1868 you said you commenced working

at quartz mining? A In
1868 I commenced working in
quartz mining - worked some
there.

Q And then you went to
Meadow Lake quartz mining?

A I worked in 1868 quartz
mining at Meadow Lake

Q How long did you continue
there? Until 1873?

A No sir I do not recollect
exactly how long I was at
Meadow Lake

Q You did not do any
mining except quartz mining?
after 1868 until you went
to the Gold Run claim in
1873? A I worked a
little on Bear River during
that time

Q Well I mean generally
what was your occupation
from 1868 to 1873? A Well
I could not tell what I did
the most of during that
period

Re-direct Examination of Joseph Price

Mr Byrne Q Did you say that it is practically impossible to build dams upon the American river to restrain the flow of the tailings from the hydraulic mines?

Mr Caldwell I objected to that.

The Court I do not remember that he said anything about it.

Mr Byrne I was informed that during my absence this morning the question had been asked. I want to explain to the Court the percentage of the hard rock above the 15 or 25 feet that you have described as being illustrated by this sample now before the Court, up to the level of the 120 feet which constitutes the blue gravel?

Mr Badwalader He has already been over that and I simply cross examined him on it. The objection is that he has been over it once and I simply cross examined him as to the depth of it. He gave Mr Byrne the greater depth and me a lesser one.

The subject is exhausted Mr Byrne I did not ask him the depth of this exceedingly hard element. Mr Badwalader did and he said it was 15 or 25 feet and now I desire to ask him what is the character of the material above the 15 or 25 feet whatever it may be to the plane of 120 feet which he has described as being the depth of the blue gravel. I think that is an important fact.

The Court How does the other differ from the 25

feet of cement?

The Witness I think the statement that I made before the way I intended to make the statement read whether it does or not that there is about 60 feet from bed rock, a very hard material which is from 15 to 25 feet of this kind (No. 1) And the other is blue gravel and very rocky but not as coarse rock as what this 60 feet is below. It is of a very heavy nature, hard and compact but the rock is not as coarse in this stratum above in the upper 60 feet as it is in the lower. As you go down as I said before, it increases in solidity.

Mr Byrne Now among other things you said that was not a fair sample of the bottom. A I do not consider it a fair sample of the bottom.

Q Will you explain why?

A From the fact that it is not as coarse as the average of the bottom is by any means

Q If you were called upon to take from that mine a fair sample would it contain more solid rock than the one now before you — than the specimen now before you —

< Objected to as leading >

The Court I supposed the question implied why this was not a fair sample

Mr Byrne If the Court is of that opinion I will withdraw the question. State you made any estimate as a miner and from your experience in mining and as a foreman of mines as to the length of time it will take to wash out the bottom channel which remains in the Gold Run district there?

Mr Caldwell I object

to that as not re-examination
and for the further reason
that he is not an expert

The Court That is certainly
a new subject for this witness

Mr Byrne I ask leave of
the Court to ask the question
as it is material, much
depends upon the time in
which this very heavy
material can be washed
down

The Court You can recall
him for that

Mr Byrne Did I get an
answer to that question?

A I have not answered that
question as yet

Mr Byrne Will your Honor
permit the question to be
asked?

The Court Yes sir

The Witness I have

Mr Byrne Q How long will
it take? A It will take
somewhere in the neighborhood
of 35 years

Q Something was said

about undercurrents. Now
you describe to the Court
what an undercurrent is.

I do not think any witness
has yet done so

A I think I can

Q Please do so

The Court Some of the witnesses
for the plaintiff described
them. I suppose you have a
right to have it described
again

Mr Byrne If any proper de-
scription of an under current
has been given, I have not
heard it. I have not always
been in Court. It will take
but a few minutes to do it.

A In constructing an under
current a person at first
has got to look for a suitable
place for a good undercurrent

Mr Caldwell I object to
that. I don't want any
reimburse statement as to
an undercurrent. Let Mr
Byrne state what it is

A After finding the place

you have got to have fall enough in this place for a dump. If you construct an undercurrent at the lower end of your flume, right at the lower end you cut out a portion of the bottom of your flume and put in cross bars generally about $\frac{5}{8}$ of an inch apart, some times $\frac{3}{4}$, sometimes as high as an inch just according to a man's notion about that.

Q State what they are made of as you go along?

A Iron as a general thing I have seen them of wood but as a general thing they do not last very long, the material that runs across those bars drops through those apertures, those openings, the fine material dropped into a chute box underneath. This chute box catches this material and leads it out into a

broad flume sometimes 8 feet sometimes 12, sometimes 40 feet wide

Mr Byrne State to the Court what the effect of an under current is upon hard material such as that specimen < No. 1. > which you have before you?

A It would have no effect.

An under current would have no effect on that

Q Would such material as that get into an under current under any circumstances?

A It would undoubtedly not. It could not get into the under current. It would just simply go on over your ~~grate~~ bars and out into the ~~grate~~ dump there

Q Is any other expression used in regard to these bars except grate bars, what are they called commonly — a grizzly? A Well I never heard them termed a grizzly. A grizzly is something else

I can explain in half a minute what a grizzly is.

Q What is that? A A grizzly is a place at the lower end of a dump for the express purpose of separating heavier material and to let your fine material go on through your claim for the sake of saving the wear and tear of your flume, getting rid of your coarse rock as soon as possible. That is the intention of the grizzly.

Q Something was said to you in cross examination as to the rights of other miners, that is to say if another mines had a claim in a ravine would you have a right to dump your tailings in that ravine?

Well and I object to that as being a question of law.

The Court The Witness said that those things were all governed by the custom rules,

and regulations of the district.

Mr. Hart I object to it on the Constitutional ground that they could not make any law that would authorize them to dump on somebody else.

Mr. Caldwell The further objection is that it is not ~~an~~ ex-amination.

Mr. Byrne That question was asked and particularly asked in reference to this point. It was asserted rather than asked by Mr. Caldwell that you might exercise your rights of dumpage and discharge which the witness testified to upon his direct examination provided you did not interfere with the rights of others. Now I propose to show by this witness, and I can show by 5000 witnesses in the State if it is necessary, that every man who took up a

mining claim in the State of California in early days acquired the right, subject to the rights of others above him to discharge his tailings into the particular ravine or Cañon in which he was working and I propose to show by this Witness that the custom existed not only in all places of which he has knowledge but more especially and more particularly in the Gold Run district, that is in the Indiana Still ravine. For instance; if one man owned a claim on the lower part of a ravine he was of necessity and by virtue of this custom of which I speak and which is law, bound to accept and receive all the tailings that came down from the mines above; that it was not a matter of his consent

it was not a matter of
 acquisition on the part of
 the person exercising this
 right, it was such a
 matter of general custom
 as made law, that al
 ways makes law under
 our system of jurisprudence
 that he could not deny the
 rights of the superior pro
 prietor if you please, or
 the person owning the claim
 up the ravine above, to
 discharge his tailings into
 that particular ravine
 and to allow them to flow
 through the claim. If
 it was an inconvenience to
 him it might be his mis
 fortune but it was an
 absolute right on the
 part of all miners to do
 that, it was the universal
 practice and never was
 disputed. That is what I
 propose to prove by this
 witness if he knows it

The Court If the evidence

were admissible at all, it would be that in cross examination he was asked if they did not have to respect the rights of others in tailing into streams. I do not remember any answer of the witness that requires any explanation on that point. She did not indicate that there were any such rights.

Mr Byrne I wish to recall the attention of the Court to the fact that this question was asked upon cross examination, you might dump your tailings in the stream or ravine provided you did not interfere with the rights of other miners and to the further fact which was somewhat elaborated that no miners undertook at that time to interfere with the rights of other miners, to invade the rights of other miners. I simply

ask this question for the purpose of showing that these other miners that were further down the stream or Ravine as the case may be, ~~owing to the~~ ^{had no} particular rights which the Superior proprietor, if you please, could invade. In other words every man who owned a mining claim upon any stream or Canon had an absolute right under the existing custom and under the prevailing law to discharge his tailings into that Ravine, and, if indeed, it inconvenienced in any way the rights of the proprietor below that was simply his misfortune. In other words that the absolute right existed, and without any particular acquisition of a place to dump the tailings, that is what we desire to show

Mr. Adwalades I object to any parcel proof of the mining laws or regulations in this district.

Mr. Byrne I propose to prove by this witness that although Mr. Price might have a claim up the ravine, say up Indiana Ravine, below the claim of the Gold Run Company, prior to the location of the Gold Run Company, that nevertheless the Gold Run Company by virtue of the customs... and usages which exist would have a right to discharge its tailings upon his claim and fill him up 100 feet deep, that it was not necessary to acquire this by virtue of any particular privilege excepting that which the common usage gave, and whatever right he acquired as a miner, not being a proprietor in fee at all

not holding the title from the government at all, — whatever right he acquired would be subject to the usages of the district and of the Country, that is what I propose to prove by him now. At that time of course, in strict legal sense of the term, all miners were trespassers upon the public domain. They were here by the permission of the government at the time.

Mr Hart My objection has been forgotten entirely for some time. My objection is based upon the Constitution which provides that no property shall be taken or injured except for a public use and after compensation being made and this is a legal question upon which this witness is not permitted to speak. If they had such a mining custom as that that mining custom

would be in conflict with
the direct provision of the
present Constitution and
of the old Constitution as
it had been uniformly
construed by the Courts

The Court It is a mere
matter of time and I will
let this testimony in.

Ex
==

<Exception by plaintiff>

<The question is read>

A I would most assuredly
and I state here in answer
to that question that
when I answered that question
before I thought that my
answer that it was a general
custom covered it

Mr. Caldwell I move to
strike that out as not
responsive to the question

The Court She can explain
it

Mr. Byrne & Is it possible
in the conduct of hydraulic
mining that miners should
deposit their tailings in
any other place or places

excepting in the nearest
and most convenient ravines
and outlets?

Mr. Leadvallades I object
to that as not re-examination
The Court I think you
asked him if there is any
other way of working those
mines

Mr. Byrne Perhaps I did
Q In reference to the top
60 feet of that blue gravel
deposit what do you say
as to its hardness and
solidity?

Mr. Leadvallades I object
to that. That has all been
gone over twice

The Court I think you started
in very elaborately to show
the nature of this deposit

Mr. Byrne If the Court
understands it I will wish
draw the question.

Q You were asked what
tendency to ~~check~~ the cur-
rent of the river the deposit
of these boulders in the

river does have - as to the effect

< Question objected to >

Q What tendency it had to check the current?

The Court then asked him about the dead water above the dumps. What do you wish to ask about it

Mr Byrne If the tendency of this deposit was to check the flow of the current - what effect would it have on the flow of the tailings down the river? As well as depositing anything in the stream it would naturally fill that stream up, now stream becomes wider and less confined, consequently the matter which has turned into the stream would settle a good deal quicker, it would obstruct the flow of the tailings

Q It would obstruct the flow of the tailings? A It

would obstruct the flow of the water.

Or what effect would it have upon the buildings if it had that effect upon the water?

The Court I suppose there are some general truths like that that the Court will assume; that water runs slower, that it would diminish the carrying power of the water.

Mr Byrne One more question as to the filling between the mouth of Canon Creek and Pickering's Bar did you say?

Mr Caldwell I object to that; the Record shows what he said. It is not new matter anyway.

A Between the mouth of Canon Creek and the head of Pickering's Bar I said the deposit was very small there, very light.

Mr Byrne Was there any deposit there at all? As there is none to speak of; there is very little.

Re-crop Examination of Joseph Price

Mr. Cadwalader. When you work in bars you either put your tailings in the river or you pile them on your claim about you? A We always dumped our tailings into the river.

Q Well, you always put them into the river? A Yes sir.

Q When you worked in dry diggings where did you put your tailings? A We put our tailings in the next available dump, the nearest place wherever we could get rid of them to the most convenience.

Q Do you say you know of any instance where one miner by a rule regulation or custom covered up another one? Covered up the mining claim of another by direct action?

A I do

Q. Well, did you when you were mining, at any time ever deposit your tailings on the Mining Claim of any body else

A I have

Q Where they were working it?

A Where they were working it.

Q Where? A In the Pied

Shall ravine in El Dorado County

Q. Did you ever do it any where else? A Yes sir, I

have done it in Bear River

Q Whereabouts?

A A little below the old Emigrant crossing, on Bear River about 200 yards from the crossing below the head of the Old Ditch

Q All Piedmont, whose claim was it that you piled your tailings on? A I did not say that I piled them, but I ran them on to Platt, Wilson, Marshall, Williams I think they all had claims below me

Q Where did you put your tailings? A I dumped them in the ravine

Q You dumped them in the ravine?
A Yes sir

Q Your claim ran down to the water course didn't it?

A My claim ran - my tail flume tailed right out into this ravine

Q You had so many feet on that water course?

A I was not working on that water course, but my flume tailed out on that water course.

Q You tailed out directly into that water course?

A Yes sir

Q Now, these people down you do they tail into that water course?
A They took out the ground, reworked it again right below me

Q Well, on the outside of the water course?

A They were not working on the outside of the water course.

Q Well where were they working?
A Well, they took

up the ground and reworked
it, worked it below

Q The ground where, on the
bank of the water course?

A In the water course, there
was no working on the outside
of the water course

Q You were tailing into a water
course? A I was

Q And then these men sub-
sequently went to work and
located on the bed of the
water course? A At the
time that I put my flume
in there and extended it to this
water course, for my outlet
for a dump for my tailing
they also had their claim
located on this water course

Q Well, on the water course
or in it, which?

A Well, in the water course,
in the creek

Q Did they have it located
before you had?

A They did, at least they had
the ground located before I
had my flume in

Q Defra you located your claim? A Well, I need not say as to that, because that claim I did not locate, I bought that claim.

Q. You ran your tailings into the water course, did you?

A. I ran them into the water course, that was the only place I had to run them.

Q Was it a dry ravine in the summer? A Not entirely so.

Q Your tailings went down the water channel?

A. I told you that I dumped the tailings into the water course.

Q Well, they could not work the water course could they?

A They did work the water course.

Q How could they work it, while you were working?

A They set their sluices and the surplus water, which was more than requisite for their use was carried around them in a ditch.

2. Your water that was?

A They used the same head of water that I did, or a portion of it

Q They were simply using your water then, were they and they made a connection with it?

A They were using the same water mind you that I did, but it was not my water after it left my sluice

Q Let me understand you. Let me see whether I do or not (illustrating) - Now here ran your tail flume into this water course down here and here were their claims, is that so? A Yes sir

Q Well, now they took your water here and put it into a flume and ran it around there didn't they?

A What water they wanted to use, they used right direct by in this course. The water was more than they could use in times of fresher or any thing of that kind,

They provided for that Emergency and dug a ditch round here

I well, it would be somewhat that way. Your ditch connected with theirs?

A No, my ditch did not connect with theirs. I dumped directly into the Cañon or ravine whatever you choose to term it

Did they took your water, didn't they? A Apertini of it, that is took the water that I dumped in there

Did they took it before it came to their Claim? A Well sir I could not say whether it was directly before it came to their Claims. I do not know whether their Claims extended entirely up to my dump or not, but they were in below my dump

Did you do not know whether they crossed the ravine or not, do you, you never saw the location, did you?

A. There was not mummy
found there

Q. They washed their claims with
your water?

Mr Nelson He saw the water way
nor his after he used it

Mr Cadwalader They washed their
claims with the water you abandon-
ned? A The water that
I had used.

Q You as a matter of fact did
not interfere with the working
of those claims, you rather
helped them along, didn't you?

A Not necessarily

Q They could not work their
claims if they did not have
your water? A They took
this surplus water of this
ravine more than what could
be used in those claims, as I
told you, they dug a ditch to
carry the surplus water around

Q They dug a ditch then on
the higher side in order to
carry it around, so as to pre-
vent it coming on their claims
- I think I understand you now -

They washed their claims with
the water that you abandoned?

A They used it in part. The water
was mixed when it came from
my flume, the water was mix-
ed with that water of the Canon
I cannot tell what part of
the water that I used, they used,
I cannot not go and separate that
water nor tell how much they
used

Q They did use the water?

A They used water to wash their
ground

Q Well, if your water was
it not? A No sir, it was
not my water after it went
into the Canon

Q Part of it was yours?

A No sir, not any of it after
it went into the Canon

Q. Didn't your water rather
help them to work their claims
than to prevent their working
them? A At times it might
and at other times it was a
detriment

Q Do you pretend to say now

that you did any thing that was detrimental to those mines below you?

A I do not say any thing of the kind. I did not claim that water after it left my flume

2 As a matter of fact you did not cover their claims up, did you? A I should not consider that I covered their claims up in that particular claim which you are questioning me so closely on, that particular claim was taken up and was mined there, they mined it while I was running my tailings on there, they reworked as I said before the ground that was originally there and also my tailings.

2. Now did you want to be understood by Mr. Byrne and by the Court that if another claim below had been located prior to yours, that you would have had the right to run your tailings over on to them?

A I must assuredly claim

that right to dump into the most available canon or place.
 Q. That is your idea of the law?
 A. It is my idea of the custom, and we always went according to the custom, and that was the custom that we had the right to dump there.

Q. Now you have explained that much, now describe your operation on Bear River, below Steep Hollow?
 A. No, I did not say, below Steep Hollow.

Q. Below where?
 A. Below the old Emigrant crossing.
 Q. Where is that?
 A. Well, it is on Bear River, it is about a half a mile below the head of the Mmerris Ditch, that is the ditch that was constructed before the Extension, the Yuba extension was put on.

Q. Do you mean the trail that crossed Bear River at Emigrant Gap?
 A. I did not say a trail, I said the Emigrant road.

Mr Byrne. We object to that

on the ground that it is not
re-crop Examination. This
whole matter has been gone
over

The Court. This matter as to
its being a recognized right
you brought out in re-direct
Examination

McAdams Is this place
above Dutch Flat?

A It is

2 How far above?

A Somewhere about ten miles,
between eight and ten miles
somewhere in that neighborhood.

2 It was on Ben River
was it? A I stated so

2 Did you have a river
claim then? A Yes

2 A Bar? A A river
claim, the channel of the river

2 You turned the channel of
the river, did you?

A I did not

2 You worked the channel of
the river? A Worked the
channel of the river

2. How did you get rid of

the water in the channel of the river? A We pumped it out.

Q. You sunk from the side, did you? A We sunk from the side, and drifted and pumped the water that accumulated in the mine and washed our tailings and dumped them right at our mine on to another mans ground right below us.

Q In the bed of the river?

A In the bed of the river.

Q Let me see if I understand that (illustrating) There was ~~Bear~~ River, and here was the bar that you were working under. You undermined that bar. Supposing this to be the bank of the river, and this your bar, you were working in under that bank of the river? A I told you we were not working the bar we were working the bed of the channel.

Q. From the bank?

A Now, we sunk our shaft
I well, I understand you
then again brought the stuff
out on the bank? If they had
and we brought our stuff
out in a car and dumped it.

Q Into Ben River?

A Into our sluice and then
dumped directly into Ben
River.

Q That is all there was about
that, was there?

A That comprises all, I be-
lieve.

Q Well how was that dump-
ing on any one else's claim?

A I do not understand you
I know was that dumping on
any one else's claim? How
was dumping into Ben River
dumping on any one else's
claim?

A Well, if I
had a claim here, and you had
one there [illustrating] and
our land was right here and
I dumped my sluice over
on your ground, that would
be apt to dump onto your

Claim, would it?

Q. But, you would have the body of Bear River intervening would it you there?

A. No sir

Q. You dumped into Bear River

A. Yes sir

Q. Was that dumping on to any body else's claim? A. It was, because the ground I dumped on there was another party claiming it

Q. He claimed the bed of the stream? A. Yes sir

Q. And you claimed the bed of the stream? A. I claimed a portion of the bed of the stream. As I said before the line extended to a certain mark. Below that was this other party's claim, and above it was my claim

Q. You were both working your claims in the same way, were you? A. Yes sir

Q. Both sunk down from the banks and sides and ran in under the bed? A. Yes sir

I and bought it out and
crushed it and threw it into
Bene River ? A Yes sir

2. Those are the only two in-
stances that you know of, are
they ? A I can not
bring to my mind now any
more instances in my personal
knowledge that I do my-
self

Re-direct Examination of Joseph Price

Mr Byrne You were asked if
the tailings you discharged upon
the claim below helped the
working of that claim. What
do you say as that ?

Mr Hunt. Subject to that
an immaterial whether it
helped it or not

The Court. It was answered
once, that is enough

————— " —————

Testimony of John S. Colgrave

Called for defendant

Scorn

Mr Byrne When did you come to California? A In 1850

Q. State where you mined first and then go on and state where and at what point and when you mined from year to year in the early period of your mining.

A I did the first mining in Coloma in the South Fork

Q. And then? A And then I went from there to Georgetown. That was the next place that I mined.

Q When did you mine at Coloma? A In 1850

Q When did you go to Georgetown A I think I got to Coloma along about the first of September, I was there about a month and went from there to Georgetown. I mined on Cain Creek and in a ravine

South of Georgetown, I do not know as it had any name, I do not remember about it now.

2. When did you say that was? ~~And~~ the fall of 1800

2 ~~Is~~ that the same Creek that empties into the North Fork of the American River near Gold Run? A No. 1, it empties into the Middle Fork.

2 Into the Middle Fork?

A Yes Sir.

2 at what point? A That I need not tell you, I think though that it is not far from what was called at that time, Slab-jack Bar.

I will you oblige me by going on and stating where and when you mined and how long you mined at each particular place up to the time that you became a resident of Dutch Flat. I want to show you general knowledge of the mines of

this State? A Well, I
 mined I think until the 1st
 of November 1850 up about
 Georgetown and then I went to
 Pilot Hill and ~~wintered~~ wintered at
 Pilot Hill during the winter
 of 1850-51 and in the spring
 I went to mining on Spanish
 Bar on the Middle Fork of
 the American river and that
 fall, that winter of 1851, I
 went to Placerville and I
 stayed there I think till
 some time in the winter
 and from there I went back
 to Pilot Hill again and stayed
 there the balance of the winter
 of 1851 at Pilot Hill.

I Proceed? A Then
 I think from there I went
 to Salmon Falls on the south
 Fork of the American River,
 it was in the spring or sum-
 mer rather of 1852. I flumed
 the river there at Salmon Falls
 and worked there during the
 season within a few days
 after the fire here in Sacramento

I recollect that was about the 1st of November 1852 and then I came down here with two other parties and built the old Suwanee House at No 141 J. Street.

When was that?

A In 1852, immediately after the fire.

That was in 1852?

A Yes, I stayed there until the Spring, I think it was in April 1853 and from there I went to San Jose valley. I think in April 1853.

What point?

A Well, it was on the old San Jose Mission, I farmed it there two years. In the fall of 1854, I came back and continued here in Sacramento again.

In the fall of what?

A 1854, in the Spring of 1855 I went to Iowa Hill and mined at Iowa Hill until the fall of 1858. In 1858 I went to Dutch Flat

and have been there ever since

Q In 1855 until 1858 you were at Jowatell? Answer

I state to the Court what quantity of material was washed from the hydrauli mines in Jowatell during that time to your knowledge?

A I do not think there were but 2 or 3 very small hydrauli claims up to that time in Jowatell.

Q What was the character of the mining there at that time?

A Well, it was mostly drift-
ing. The Jameson claim that was the first claim I think that was opened there, they merely hydraulicked off the top some 40 or 50 feet, something like that in order to get out the bottom which they picked up and shovelled into sluices

Q That is prior to 1858?

A That is in 1854. They commenced I think in 1854, that was the first hydraulicking I ever saw, was in the

Spring of 1855, and that was
the Jameson claim
at Iowa Hill?

A at Iowa Hill.

Q Have you been at Iowa
Hill recently? A No, I
have not been at Iowa Hill
for at least twelve years.

Q In how many different
counties of this State have you
resided and carried on mining?

A Well, only two I think,
El Dorado and Placer.

Q El Dorado and Placer?

A Yes, those are the only
places where I have ever mined.

Q Since 1850 when I understand
you, you have been a citizen
of these two counties, or at
least of one or the other of
them? A Yes sir.

Mr Hart. You farmed on the
San Jose mission - you say?

Mr Byrne. Did you say you
mined at Coloman in 1850?

A Yes sir.

Q Where is Coloman, in what
County? A El Dorado

Mr. Hart. He says that since that time he has farmed in San Jose Mission for a time and also lived in Sacramento

Mr. Byrne. Since 1850 how long have you resided outside of a mining country within the State?

A About 2 years.

Q Since 1852 what has been your principal occupation?

A Mining

Q Do you know the customs which in this State have prevailed say since 1850 in regard to the location and tenure of mining claims and the manner in which they have been worked?

A Well, I suppose I am pretty well pretty familiar with it

Q If you do state to the Court your knowledge of that fact?

Mr. Hart. There is the words Customs again.

The Court. It don't seem to be of any consequence any way. I do not think any body but

a professional man would understand the difference.

A I have understood it to be the custom for all miners to make use of any sawmill, gulch run or anything of that kind to deposit their material from mining. I know it to be the universal custom to do so. Not true. The universal what?

A The universal custom of the miners to dump their tailings wherever it is most convenient and most available.

Not true. In what part of the State has that custom or practice prevailed during the time of which you speak say from 1850 to the present time?

A In the particular counties in which I have always mined, it has always been the prevailing custom.

I have no any knowledge of the existence of that custom in other counties of the State?

a well, I need not say I have

I have in at any time been the Superintendent of any mines in this State? A I have

I What mine? A Mines at Dulch Flat, the Palas Star, Southern Cross,

I Speaking of this custom & what extent within your knowledge has it prevailed throughout the State

Mr Cadwalader We object to the use of the word custom

in fact. We will add the objection that it is irrelevant & so far as it undertakes to establish a custom beyond the limits of the Gold Run District

The Court. So far as the last objection it will be overruled in order to give you an Exception, but I suppose there is no objection to using the words practice or habit

Mr Byrne I ask you this
 Question has there been any
 general practice or usage in
 California in relation to
 the dumping or deposit of
 tailings and the debris from
 the gold mines in the
 nearest and most convenient
 places of outlet?

A I have never known of
 any.

Q Do you know whether
 there is or not?

A I do not think I
 understand your question
 Mr Byrne.

The Reporter Read the
 question.

A Well that I say has
 always been the usual
 custom or practice or
 whatever you please to
 call it. I call it custom
 - the universal custom of
 miners to dump there
 tailings wherever they
 please.

Q Why

Mr Starr Objected to the question for the same reasons, urged to a question on the same subject heretofore.

Mr Byrne Is there any other way or manner any practicable way I mean of working the hydraulic mines of this state excepting by the use of water and the discharge of the tailings into the nearest outlet or ravine?

A I do not know of any other.

Q You think not?

A I do not think there is

Q Upon what do you base your statement, how much experience have you had in relation to this subject?

A Well I have had about twenty years experience

Q Well state how extensively how many claims have you worked or seen worked?

7472 A Well my hydraulic mining

has all been down about Dutch Flat, I know all the miners at that place all had the liberty or exercised the liberty at least of dumping there tailings into Bear River, those that would dump in on that side, the tailings all went into Bear River in the end, some went into the small ravines.

Q State to the Court if you please your knowledge of the Gold Run Mining district, when you first knew it and your opportunities of observation and knowledge in regard to it
A It is very limited. I know where the district is but I know very little about it.

Q Did you ever superintend a mining claim in the Gold Run district?
A I did for about three months.

Q When was that?

A It was the winter of 1861 and 1862.

Q What was the condition of the surface of the district with reference to its present condition at that time, what at that time was its condition with reference to its present condition, I think that was about the commencement of hydraulic mining down there in that district. Verry little had been done before.

Q How many claims were operating at that time?

A There may have been maybe six, probably six claims.

Q How much water was being used in that district at that time?

A That I could not tell you, I know I used a very small head I think

About 300 inches is what I used.

Q Upon what claim?
A Well I think the claim was called at that time the Gold Run claim, it was situated on the outside of the Gold Run ridge of gravel, immediately on Gold Run Ravine, it tailed into Gold Run Ravine and from there into Canyon Creek.

Q That it discharged into Canyon Creek, in those days you call 300 inches a small head?

A Well I would call it a small head yes.

Q Why?

A It is a small head in comparison to what they use now days.

Q Why is it that it is necessary to use so much more water at the present time?

A On account of the bottom

gravel being a great deal heavier harder to get off than what the top gravel was.

Q I will ask you if at that time there was any deep tunnel in that district or into that channel through which the bottom gravel could be worked?

A I do not think there was.

Q Is there any now?

A I do not know of but one.

Q What one is that?

A That is the Gold Run tunnel, that is the only one I know of.

Q Do you remember the time when the South Yuba Canal Company extended its works to Gold Run?

A Yes I know that the ditch was dug there, I do not know that I can name the year though

Q Stale is as near as you can?

A I think it must have been about 1863 or 1864 somewhere along there.

Q After the completion of that ditch to Gold Run how many ditches were conveying water to that mining district?

A Three I think.

Q Will you name them?

A The South Yuba and they called it the Bradley and Gardner ditch and the miners ditch?

Q What was the carrying capacity of those ditches if you know or as near as you know?

A I do not think I could give a very close estimate, I think the Yuba ditch carries about Dutch Flats I think about 3000 inches.

Q Then there is the Bradley and Gardner ditch?

A I could not tell you, I
 Could not tell you within
 500 inches.

Q Tell us within 500 inches

Mr Hart A It is a guess.

Mr Byrne. Can you tell
 within 500 inches?

A No sir I do not think
 I could. There water was
 so divided up that I have
 no idea of the water that
 they took to Gold Run

Q What was done with
 the water between the
 years 1865 and 1875, to
 what use was it devoted?

A The most of it I think
 was hydraulic purposes

Q State where and in what
 manner?

A It was used in Gold
 Run in the Gold Run
 mining district.

Q Explain to the Court
 what was going at that
 time without requiring me
 to ask you so many
 questions?

A I do not think I am capable of giving it.

Q Tell the Court just what your observation was?

A I had no business with that district and was seldom down there. I know they were mining down there and that is about all there is about it, about all I know about it.

Q Prior to the construction of this deep tunnel which you speak of as being the Gold Run Tunnel was it feasible to wash away the lower stratum of the deep gravel, the blue gravel in that district?

A I do not think it was.

Q Explain to the Court why?

A There was no outlet

Q I wish you would elaborate that a little make it clearer to the Court you are an experienced miner?

A Well the object of running these lower tunnels is to get at the lower gravel and they have to be run a very long distance some times, starting in from the side hill and running a thousand or two thousand feet and then opening up from there to the surface there being no other way to get the material past the Rim Rock in order to run it out through these tunnels.

Q How was it as to the surface material?
 A Well the surface material being so much higher it would take but a very small surface of the Rim Rock to be cut off to run it off - a very short tunnel of maybe three feet through the rim, that would let it wash off without any trouble, the bank being

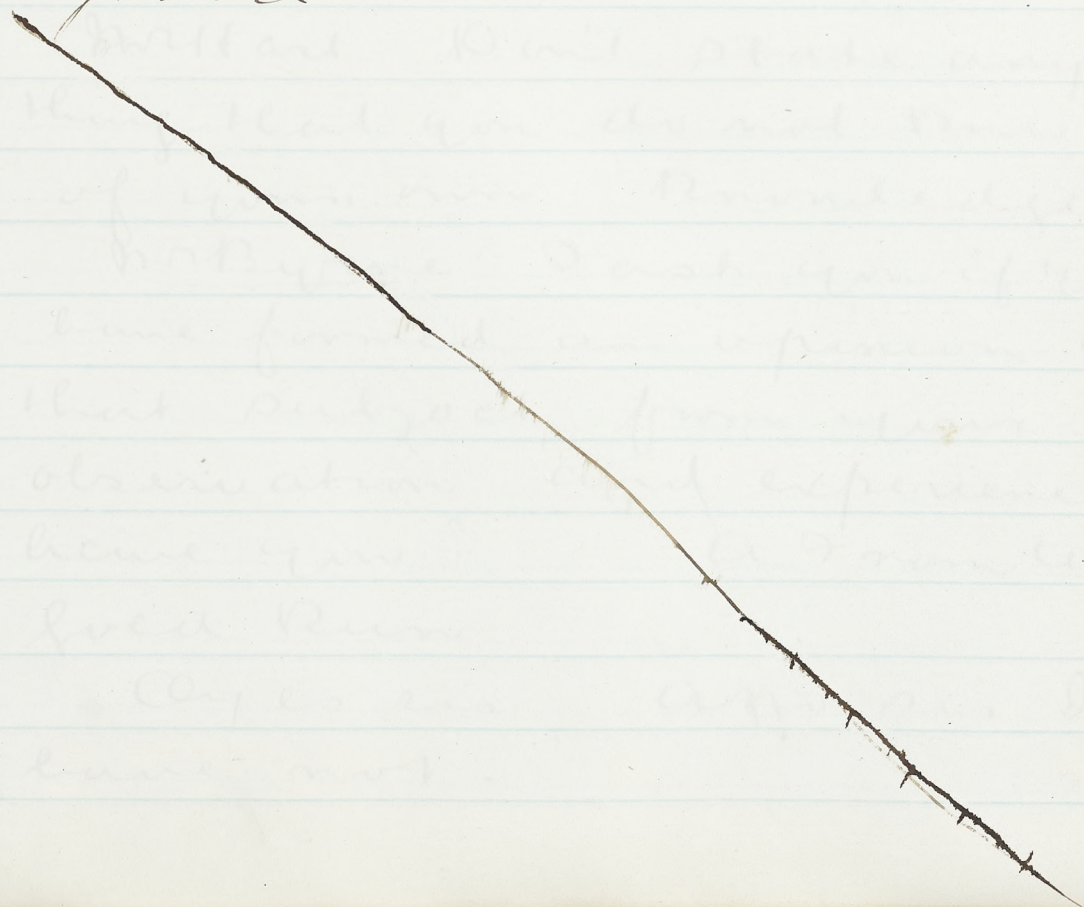
soft they could cut it down
and wash it off to that
depth.

Q What now is the dif-
ference of the top and
bottom material in that
Channel?

A There is a great difference

Q Explain it?

A The top gravel is finer
consisting of a good deal
of loam easily disposed
of and easily washed off.
The lower portion of it
contains much rock, cement
and that character of
gravel



Q Have you from your judgment and experience as a miner formed an estimate as to how much of that bottom material can be carried away in suspension by the water so as to reach a point say four or five miles below the mouth of Canon Creek? A I do not think that I am competent to state that point so far as regards the Gold Run mines, I am not familiar enough with it. I am satisfied about what I think.

Wittart Don't state anything that you do not know of your own knowledge

Mr Byrne I ask you if you have formed an opinion on that subject from your observation and experience - have you? A From the Gold Run

Oyes sir. Ans sir I have not.

Q What has been your observation and experience in regard to the existence of old water channels in that section of the County Wabash I object to that as irrelevant and immaterial

Mr Byrne We contend that it is a material part of our case. We have fore shadowed or mapped out so to speak a theory in regard to ^{the manner in} which these deposits were originally formed which we claim to be correct, which we say we have sustained by testimony and which we propose to sustain by further testimony and which is quite important to the determination of the issue in this case, and if this gentleman now upon the stand from his knowledge and experience as a miner for the last 30 years in this State has qualified

himself to form an intelligent opinion on that subject we claim that we have the right to ask what that opinion is, and if it is favorable, to obtain the benefit of it.

The Court I suppose he can describe the deposits but unless he is a geologist he could hardly tell you whether it was a river channel or not.

Mr. Byrne My question was intended to obtain from him a description of the manner in which these deposits are placed and which any man in fact who has ever seen them can describe. I do not know that Your Honor has, but I hope that before the decision of this case that you will see them.

The Court Ask him to describe the deposits. There is no objection to that.

Pte says however that he does not know much about them at Gold Run

Mr Hart we ask that it be confined to the deposits at Gold Run

Mr Byrne we claim he should not be confined to the deposit at Gold Run because we say that this is a part of the general system of river channels which extends throughout that portion of the State which contains the auriferous gravels from which the millions of gold are being extracted

The Court I did not suppose that there would be much controversy about the fact that there would be considerable deposits.

Mr Byrne And it has been continuously and repeatedly contradicted that any such system as the old river channels does in fact exist. Mr Caldwell

for instance claimed that these deposits came from the Pacific Ocean.

The Court I do not know in this case that it makes any particular difference where it came from.

Mr Byrne We do not know that it would, but it might and we would like to have his opinion upon the subject having shown him to be familiar with the subject and a man of experience.

The Court Ask him the nature of the deposits; ask him to describe them.

Mr Byrne O will you describe to the Court the appearance of the gold Run Channel as presented to you in looking at it from the Indian Hill claim and extending from there up to the railroad, I mean that portion of it which is left, which remains to be washed? A well I suppose

It would agree with about
 all the balance of the old
 mining channels, it is
 simply a regular defined
 wall rock, pin rock you
 might say the same as
 any other river filled up
 200 or 300 or 400 feet deep
 with gravel and that I
 believe is the accepted
 theory that the Gold Run
 channel running in that
 direction nearly North
 intersects with our channel
 in Dutch Flat which comes
 from the North and runs
 South there and then after
 they come together turn off
 in a Western direction run-
 ning across Bear River
 Little York, Sheep Hollow,
 Greenhorn Canon and
 so on down to Smartsville

Mr Hart are you speaking from knowledge or of something else than

The Court Tell us what you have observed yourself

A. This channel I suppose that is being traced it is visible to any body to see it. I have worked in it - Not in the Gold Run channel understood. I have never had any work there. Mine was all done at Dutch Flat.

Mr Byrne. Where this channel has been exposed what has been plainly observed on both sides of it.

Mr Hart The Gold Run channel

Mr Byrne Yes

A. I cannot answer that question. I cannot not say that I have ever seen the rim rock of the Gold Run channel

Q. Have you seen it anywhere else? A. I have seen

it at Dutch Flat.

Q. How far is Dutch Flat from Gold Run

a. Well about two miles

Q. What do you say as to the identity of those two channels at those places. What is your opinion on that subject?

a. As to the similarity you mean?

Q. Yes a. The Gold River channel is entirely different, the material?

Q. In what respect?

a. The material is much finer that is that which is visible on the surface and as far down as it ever has been washed it is entirely different from that at Butch Flat.

Mr Hart They are much finer at Gold River? a. Yes

Mr Byrne I ask you as to the identity. Is it the same channel or is it a different channel.

~~Cross Examination
of~~

Cross Examination

Mr J. S. Colgrove

Mr Hart Mr Colgrove you say the miners have always asserted and exercised the privilege of putting their tailing wherever they saw fit

A. Yes.

Q. Without recognizing any body's rights? A. No sir I did not say any such a thing.

Q. You say wherever they saw fit?

Mr Wilson He said the dumps in the most convenient saving Mr Hart Didn't you say the claimed and exercised the right to put their tailings wherever they saw fit

A. No sir I did not say any such a thing. I said they recognized the universal right to deposit their tailings wherever they pleased in all gulches ravines canyons etc

Q. Without reference to the rights of other persons?

A. I did not say anything about the rights of other persons.

Q. That is a fact, they did not claim to recognize the rights of any other person?

A. You can take it in that light if you please. I think they had a right to

Q. Is that a fact?

A. What?

Q. That they did it. Did it without reference to the rights of any other person.

A. In a ^{limited} sense.

Q. That is a fact in an unlimited sense.

A. The discharged their tailing in all of those ravines.

Q. And they refused to recognize the rights of any other persons?

A. Nobody ever took any right or any notice of what the effect would be of their tailings.

Q. And they did not care. They did not pay any attention to it?

A. So far as the miners were concerned

Q. They did not pay attention to what might be the effect on other people's property?
 A. No sir

Q. They claimed to exercised the right to put it wherever they pleased?
 A. Yes

Q. You say the material at Dutch Flat is very much heavier ~~at~~ than it is at Gold Run?
 A. Yes

Q. What is the character of the material at Dutch Flat?
 A. The greater portion of the lower stratum is rock.

Q. Very heavy rock?

A. Yes a very heavy rock.

Q. Blue gravel?
 A. Blue gravel

Q. Of the same general character as that in Gold Run but heavier is it not?

A. I suppose there is very little difference probably in appearance all the blue gravel is the same in the old channel — nearly the same.

Q. This deposit is very much heavier at Dutch Flat.

A. At Dutch Flat it is much heavier there than any other place where I have ^{ever} seen them.

Q. What is the character of the rocks up there at Dutch Flat generally?

A. You mean what is the character of the lower strata?

Q. Yes? A. The most of the rock the very largest ones must be of the bed rock quality.

Q. How long have they been mining that kind of material at Dutch Flat that very heavy material?

A. I think the first was in 1876.

Q. And from that time on?

A. And from that time on.

Q. What is the general ~~character~~ dimension given the small and larger dimension of the rocks in the lower material there?

A. Well I speak particularly of one claim

called the Polar Star Claim.
That is the one I have operated
in more than any other. The
rocks are from say the size
of a hens egg up to rocks
that will more than fill
this room.

A. Perfectly immense?

A. Yes.

Q. They have to blast those?

A. Yes I found one that was
sixty feet long.

Q. Does that make any dif-
ference in the nature of the
flume that was necessary to
carry the material out?

A. What in the size do you
mean?

Q. Yes. Yes in the rise and fall
of the grade? A. It
requires more grade.

Q. What was the the grade
at Polar Star? A. Ten
inches to twelve feet thick
through the tunnel.

Q. That is nearly twice as
much as it is at Gold
Run, the grade

A. I do not know any thing about the Gold River

Q. Do you know what the dimensions of the flume are?

A. Where?

Q. At the Polar Star?

A. Five feet.

Q. Five feet which way

A. Two feet wide

Q. And how high? A. About 30 inches.

Q. That is the flume there through which they carried the rocks

A. Yes

Q. How large are the rocks that are sent out of that flume?

A. Well they go out sometimes three feet or three and one half in diameter.

Q. A great many rocks of that kind of the lower stratum go out?

A. Yes.

Q. This Polar Star how far is it from the river?

A. The tunnel dumps right on the bank of Bear River

about three hundred feet from the original bed of the river the mouth of the tunnel.

Q. What is the character of the majority of the material that goes out through that flume?

A. Well it is very heavy rock and gravel

Q. Very heavy? A. Yes

Q. Did you ever see any as heavy material as that come from any other mine?

A. No Sir

Q. Now proportionately how much heavier would you say this material was in there than in any other mine that you ever saw.

A. Well I should think it was at least one third more rock in there than in any other claim that I have ever seen

Q. And that is the material that forms the Polar Star dam?

A. Yes

Testimony

Charles H. Carr

Sworn for the Defendant testifying

Mr. Byrne Where do you reside Mr Carr

A. Between Dutch Flat and Gold Run, at a place called Squire's Canyon

A. Since what time?

A. I have been at ~~been~~ Squire's Canyon since 1863-4, the winter of 1863-4 — I mean 1873-4.

Q. Did you ever live at Gold Run

A. Yes

Q. How far is your present place from Gold Run?

A. About a mile and three quarters or two miles

Q. How far from the Gold Run mining district

A. I believe the Canyon divides the two districts

Q. Which Canyon?

A. Squire's Canyon. I am in

the Dutch Flat School Dis-
trict but I vote at Gold
Run.

Q. When did you first
know the Indiana Mining
District? A. In 1854

Q. Did you know that
there was any such a district
as Indiana Hill mining
district? A. There was
a place went by that name
in 1854. I was not very
much conversant with it.
I have been there.

Q. Point out, there is a
map which describes the
Gold Run mining district.
Have you ever examined it?
A. I believe I have seen this
map before or one similar
to it.

Q. ^{Have} Are you sufficiently familiar-
ized with it to answer ques-
tions in relation to the claims
there? A. Yes I know

nearly all the claims at
Gold Run that have been
there since 1865.

Q Prior to what time ~~where~~ the claims of the Gold River District located.

Mr Cadwalader Let them show their mining locations.

A. Most of the ground I think was located -

Mr Cadwalader (Only) I want them to produce their rules and mining regulations and show their locations in conformity with them. They have these rules and regulations here. We object to this testimony. They must first produce the ~~real~~ mining rules and regulations.

Mr Byrne We have not those rules and mining regulations, and furthermore when we were presenting our proofs of title it was conceded on the part of the particular claims which were described in our patents belonged to us by virtue of the title derived from the Government of the United States.

The Court What is the purpose of this proof if that is already admitted

Mr Byrne This particular proof we desire to elicit to support more particularly our defence of prescription. We say that for 20 years we have enjoyed these properties in a certain way that we have been exercised in our rights as miners there during all this period of time and up to a comparatively recent time without objection. I propose by this witness carrying others to show that this is true and of course there is no other manner or way by which we can show it. That is the only way we can get it into the record. Even if your honor had personal knowledge of the fact that we had been enjoying our properties at Gold Run for the last 25 or 30 years, using them in that particular way, it would still be necessary that for us to prove the fact

It would be necessary to prove it by the witnesses.

Mr Byrne I will charge the question and ask this question. Prior to what time were the claims of the Gold Run Litch and Mining Company in Gold Run District located, and in what way.

Mr Hart objected to the question on the grounds that it was irrelevant and immaterial. Question withdrawn.

Mr Byrne at what time did you know of the mines at Gold Run and particularly at Inaciana Hill?
A. In 1854.

Q. The claim now owned by the Gold Run Company being worked?
A. In 1854 I

know there were mines at Gold Run - At Inaciana Hill.

Q. Do you know what is now called the Inaciana Hill claim of the Gold Run Company?
A. Yes.

Q. Where with reference to

these particular claims were mining operations being conducted at that time. A. Very close to it.

It was right on some ground already claimed by the Indian Hill Company.

Q. Are you familiar with the Gold Run district?

A. I have lived there several years, and mined there.

Q. Prior to what time were all the claims in that district located?

Objected to question withdrawn.

Q. Prior to what time were those claims being worked by persons who were in possession of them if any body was?

A. Prior to 1860 most of them were worked on.

Q. At what time was the surface principally washed off if you know?

A. About 1873 or 1874.

1874 it was all exhausted pretty much.

Q. Did you yourself ever

work in that district

a. I did

Q. Where? a. at Gold
Run

Q. And when? A. From
1865 to 1872 or 3

Q. In what claim?

A. a claim called the church
claim.

Q. Is what company or
persons does that claim be-
long at this time?

A. It belongs to the miner's
ditch company now

Q. What do you mean by
the miner's ditch company
a. The Indiana Hill Com-
pany

Mr Cadwalder we object
to the witness telling who
it belongs to. That is a
matter of hearsay and con-
veyance

The Byrnes Do you mean
the Gold Run ditch and
mining company.

A. Yes

Q. Why did you use the term

mining ditch company. Explain that term.

A. That ditch at one time was bought by the miner at Gold Run and it was by that name for a short time afterwards.

Q. Did you ever own any claims or any interest in any claim in the Gold Run District?

A. I did

Q. In what claim.

A. The church claim.

Q. When did you acquire that interest?

A. In 1866 the fall of 1866

Q. State to what extent the mines in that district were at that time being worked and in what manner.

A. They were worked very extensively in the winter of 1866.

Q. Describe in what manner

A. By the Hydraulic method

Q. How many claims were working?

A. Three must

have been 27 or 30 claims there
 Q. I asked you how many
 were working? A. They
 were all working when they
 could get water. They were
 not all working at any one
 time generally. Some would
 be laying off for repairs
 I do not think there were over
 30 claims at full blast
 on any one day

Q. Do you know how many
 inches of water mine run-
 nement were used at that
 time in the working of
 those claims?

A. I used 300 inches

Q. State if you know how
 many inches of water were
 used in that district or
 as nearly as you can esti-
 mate it? A. I think

the ditches had a capacity
 of 800 inches

Q. What was done with
 all the water that came in
 there? A. It was all

used for mining purposes

Q. Where? A. at Gold Run
Indiana Hill.

Q. What time are you
speaking of now?

A. 1865, 1866, 1867 up to
1873.

Q. From 1865 to 1873?

A. Yes.

Q. How as to the working
of those driers night and
day? What was done in
that respect?

A. There
were some of them worked
nights, those that were in
a condition and would
make it profitable worked
nights. I did not run my
drier nights. I started in
to run nights but the
banks were so high that
it was not safe.

Q. Where was the place
of out let or discharge
for all the tailings that
came from that district in
that place during those years?

A. It went into Canyon
Creek and from there into

the North fork &

Q. Of what?

A. Of the American river

Q. Upon what grade was it the customary to place young fumes or stumps?

A. From nine to twelve inches. I believe some had their boxes on a heavier grade. — from nine to twelve inches

Q. And what was the length of a box? A. Twelve feet

I think there were some claims run on a twelve inch grade — twelve thirteen or fourteen

Q. What claims do you now speak of? A. I am speaking of all the claims at Gold Run

Q. Do you remember the names of any of those claims?

A. With reference to what?

Q. That worked on a heavier grade than you mentioned
A. I did not but I have heard some of the boys speak of it and say there was such a grade on some

of the miles there.

Q. At what time was the surface or the upper stratum of the Gold Run district entirely mined away. By that I mean that portion of the mining ground there that could be washed without a deep tunnel? A. In 1873 or '4 it was all washed off except some little patches down on the river.

Q. How high was your bank in the church claim.

A. 160 feet in places. A great portion was 150 and 155 and 160 feet.

Q. How much material did you wash away from that bank as compared with the quantity that can be washed away from the bottom stratum of the Gold Run claim at the present time or in the future? A. Well a great deal more.

Q. How much more if you know. A. I believe by

can move dirt with 900 inches of water than they can run in the Gold Hill ditch running comparison now with 1200 Mr Hart. That is four times as much four times three is twelve? A. Yes

Mr Bayne Does it follow that it is only four times as much because four times three are twelve? Explain the condition - the difference - the difference in the character and material and the difference in the grade in both the places.

A. I do not understand your question

Reporter read question

A. No sir that would not follow.

Q. Explain then what you mean? A. I have been

down in this Gold Run claim and I saw that they could not get dirt and after they got it it would not run out. I always had an abundance of dirt

and I run my boxes to the full capacity. I had no trouble to get dirt.

Q. Why was that, why and this difference of affairs exist

A. How?

Q. Explain to the Court what the difference was and why the difference existed?

A. I have. That was a material difference was it not. I had always an abundance of dirt and dirt that was light and easily cut out.

Q. In washing the top?

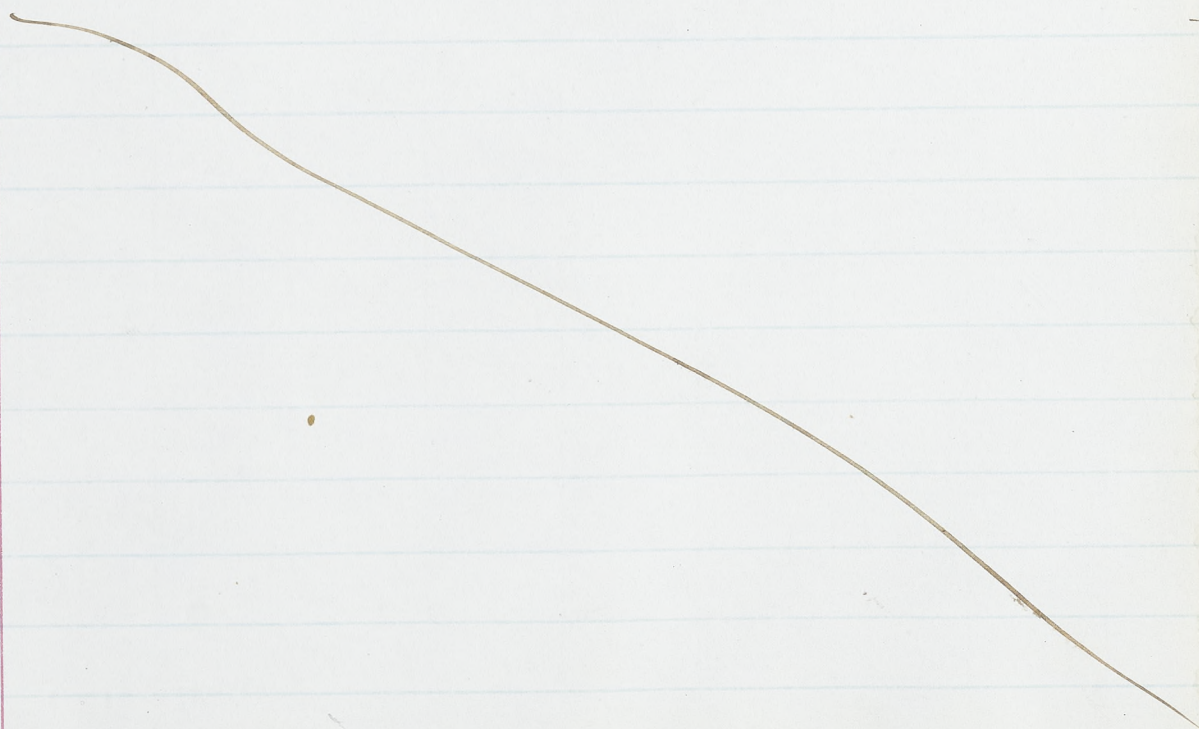
A. In washing the top I run my boxes full to their full capacity and I washed ^{ever} ~~out~~ out of dirt at all. I always had an abundance of it.

Q. How is the conditions of affairs with reference to the bottom as you have observed it with reference to the deep pit of the Gold Run Hill mine?

A. The last time I saw them

running in the Gold Run mine
 the water was running of
 blocks, like this (indicates)
 and there the water was run-
 ning clear and the men
 were going through there
 with sledges and hammers
 to break it up, to get it star-
 ted.

Q. How late was the top
 washing done there in that
 district if you remember
 a. I left there in 1873.
 The fall of 1873. The
 top was all washed off
 then except some on the
 borders the mines but it
 didnt amount to much.



Q What was the population of Gales Run say from 1865 to 1873, the time you lived there?

A Well 1865-66-67-68-69 and 1870 the population was quite large there, there were 1000 men employed down there in the mines not taking the women and children.

Q How many did you say?
A From 800 to 1000 men I should judge in that district?

Q In what business were they engaged?

A They were principally mining and some were furnishing raffles and blocks for the miners.

Q Upon what industry were they dependant?

A On the mines there was no other industry there.

Q Exclusively?

A Exclusively, there

Might have been a few
getting our Rail Road wood
that was the only thing.
Q Are you familiar with
the North Fork of the
American River from the
mouth of Canyon Creek to
Rices bridge?

A Not from the mouth of
Canyon Creek I am not.
Q From what point if at
any point are you fam-
iliar with it?

A I have crossed the
River at Fords bar in
1865 and again in 1866.
[1855 and 1856] Rep. I never
mined on the North Fork.
I have never worked any
there.

Q Have you seen the River
at any other points?

A I have seen the River
at the mouth of Canyon
Creek where it empties
into the North Fork that
is some years ago - two
years ago I guess.

Q When did you last see it?
A Not at that point since
then

Q Two years ago you
saw it?

A At the mouth of Canyon
Creek I have not been
there since and I never
have been at that point
before.

Q What do you know about
the condition of the North
Fork at the time that the
top or surface bench or
stratum was being washed
off?

A I was not on the River
at that time. I crossed
there in 1855 and again
in 1856.

Q And not after that until
what time?

A I have not been on
the River since until last
September or October.

Q I ask you what the
condition of the River is now?

A It looks very much

different from what it did
in 1855 and 56,

Q In what respect?

A It is filled up now; then
it was not filled, it was
clear.

Q Filled with what?

A Tailings rock debris.

Q Describe the present
condition of the River to the
Court?

A Well when I crossed in
1855 going to Iowa Hill
I crossed on a bridge,
I went across the River
and hitched my horse at
the toll House, I believe
his name was Hamlin
who kept the House at
that time. he kept the
Toll House, I went back
down on the River, I
went up the River a piece,
that was the first time
I had ever been on the
River and I was quite
a boy at that time and
I was looking to see if

there were any fish in the River and I went up the River a piece and I went in and had a swim in a large deep hole just above the bridge a piece. I saw where the House, that Toll House stood is all covered with tailings now.

Q How high was that House above the River?

A It must have been 65 or 75 feet above where the water was running in the River at that time.

Q Describe the depth and the width and the length of that hole of which you speak above the bar?

A Well I should judge it was all of fifteen feet, it probably might have been more at the upper end of it. There was a large pond there where the water was still

And it made a very fine swimming place.

Q Could you give us the length and width of it please?

A No sir I could not. Correctly I did not pay much attention to it, I saw that it was a large pond and still water and a nice place to go in swimming and I went in.

Q Have you recently made an examination of the Gold Run mines with a view determining in your own mind the quantity that remains to be washed as compared with that which has been washed away hitherto?

A I have not.

Q I understood you to say, or let me ask you again how many claims were running between 1865 to 1875 in that district?

A There must have been
between 27 and 30.

Q How many were running
last year?

A I do not know of any
except the Gold Run
Mining Company and Mr
Halsey.

Q Do you know the name
of Mr Halsey's claim?

A The Excelsior I believe
they call it?

Q The Excelsior?

A Yes.

Q Do you know who
the foreman of that claim
was last year?

A Well Mr Noyes.

Q Do you know his initials
Mr Hart It is the Mr Noyes
that was on the stand.
I will admit that he
is the person.

Mr Byrne. It is Noyes

Q In how many different
counties in this state have
you worked at the business
of mining?

A none but placer.

Q In what particular portion of Placer County have your mining operations been principally conducted?

A Dutch Flat and Gold Run in those two districts.

Q What do you know about the existence of Customs of miners there in relation to the workings of Claims and particularly in regard to dumping of tailings and debris from hydraulic mines into the nearest ravines?

A They always dump into the most convenient and best outlet.

Q To what extent has that Custom prevailed in that County?

A I do not know of any other Custom.

Q Was it the universal Custom?

A It must have been I do not know of any

Other either at Dutch Flat
or at Gold Run?

Q How has it prevailed
to your knowledge?

A Since I came to the
Country in 1854.

Q Did you ever hear it
disputed or contested

A I did not. I did hear
it talked one time.

Q Well?

A I believe it was at
Dutch Flat in an early
day and the man was
ruled out. it would
cause a grievance. Suppose
there was six or eight
Companies up the Canyon
and one man had squatted
at the mouth of it and
he would say you must
not run your tailings here
I own 100 feet square
at the mouth of this
Canyon - a shiftless
fellow that would not
work himself and wanted
to prevent the others

from working, the miners
 put a negative on that
Mr Hart I move to strike
 that out.

The Court So you want
 to strike out his answer
 that there was objections
Mr Hart We move to
 strike out that they had
 a controversy with some
 shiftless fellow.

Mr Byrne We will let it
 go out.

The Court Then it all
 goes out the whole answer.
Mr Cawallader Except the
 protest we want that
Mr Hart I do not care
 anything about it.

Mr Wilson We want it all
 in then.

Mr Hart I do not care
 anything about or about
 any of this kind of testimony.

Mr Wilson Let it all go out
 Or let it all remain in.

Mr Hart Well let it go in
 I do not care anything about it

Mr Byrne. Mr Carr is a
 Man owned a mining
 Claim in ravine and another
 man owned a claim above
 him on the same ravine
 would the man owning
 the upper claim under the
 Customs which have existed
 there ever since you have
 been there have the right
 to discharge his tailings
 upon the lower claim
 'Objected to'

Mr Byrne I mean simply
 as to the existence of
 a custom of that kind.
 did such a custom exist?
 A. I did

Q I will ask you what
 was done in regard to
 the particular matter of
 one mining Company or
 claim above another
 upon the ~~any~~ particular
 ravine or stream?

A They run there tailings
 down.

Q Down where?

A They did not care where
 or as to get rid of them
 I suppose a mining Company
 or an individual as the
 Case might be would locate
 a mining Claim upon
 any particular stream in
 the Gold Run district or
 in Placer County where
 you say you are most
 familiar having its
 outlet or place of discharge
 in a particular ravine
 or Canyon would any-
 body else below have the
 right to dispute the
 privilege exercised by
 that person or Company
 to discharge its tailings
 into the Ravine -

"Objected to"

Q I will ask you what
 was done in relation to
 that particular subject
 by the persons who were
 engaged in mining in
 that district since you
 have been acquainted and

familiar with it.
 Mr Starr What particular
 subject.

Mr Byrne The discharge of
 tailings on claims laying
 further down the stream
The Court I suppose he
 has sufficiently answered
 that. they dump wherever
 they could.

The Witness. I answered that
 question Mr Byrne.

Mr Byrne I withdraw the
 question.

Cross Examination Of Charles H. Carr

Mr Starr What do you
 mean by a custom?

A That is what prevails
 amongst miners.

Q What is it - what is
 a custom?

A Well the custom is for
 a miner to discharge his

tailings where he can discharge them the most conveniently.

Q You used the word - Custom. what is a Custom
A That is a custom amongst miners.

Q What?

A To discharge the tailings from the claim in the most convenient and feasible manner.

Q You mean by a custom in that sense that it was a practice of miners, the habit of miners?

A Yes if you want it that way.

Q Do you know of any mining custom law now in existence or that has ever existed in these mountains or among miners which has compelled a miner to work his claim in any particular manner?

A I have not.

Q You have not?

A No sir,

Q You say you saw the River in 1855 and also in 56 at Grand bar?

A Yes.

Q When did you see the River after that at that point?

A In October or November

Q of what year?

A Of this year

Q Fifteen years after you first saw it - 25 years?

A Yes.

Q How long did you remain at that point 25 years ago - in 1855?

A I had dinner there at the Toll House.

Q In 1856?

A (Interrupting) I had a bath in this hole I speak of and I went to Iowa Hill and stayed one or two nights and came back.

Q That was in 1856?

A That was in 1855, and again in 1856. I went to

Iowa Hill and was there
probably two nights or more
O And then you came back?
A Then I came back. I
have not crossed that point
since.

O How old were you at
that time?

A I was in my 17th year
when I came to Dutch Flat

O Had you been in the
mountains any up to that
time?

A No sir I had not.

O That was new scenery
to you?

A Yes it was new scenery
that is why I stopped and
I went looking for fish in
the River.

O And you looked at
those things through the
enlarged vision of a boy
who never had seen any-
thing of that kind before?

A I presume so. I thought
it was a very nice hole
to go in swimming and

So it was.

Q Do you know whether or
 now it is a fact that
 a boy seeing a large str-
 ucture or a mountain or
 a gulch or anything of that
 kind for the first time
 always has a very large
 notion of it?

A That depends on the boy
 a good deal.

Q It would be owing to
 how large the boy's imagi-
 nation was?

A Yes.

Q Don't you know that
 a boy looking at a thing
 of that kind for the first
 time and coming back to
 it again 20 years afterwards
 that it looks very much
 diminished in size?

A It certainly has changed
 a great deal since then.

Q So not things that have
 not diminished in size for
 instance the steeple of a
 Church that you saw first

When a boy looked larger
than it did 20 years aft-
erwards? -

A I do not know I do not
know that it would follow

Q Is it not a fact and
don't you know that a
man looked larger to you when
a boy than he did afterwards
when you grew to manhood?

A Yes; some men seem
very small to me even now

Q You lived in a country
where they raised small men
I suppose? And not
necessarily

Q You came back here 25
years afterwards; what was
there in that particular
portion of the canon that
fixed upon your recollection
the number of feet in depth
of that canon, that gorge in
the pines? A Well after I
crossed the bridge and
ribbled my horse and
had lunch at the toll house
I thought I would prospect the

river. I had considerable work to get down into the bed of the river where the water was. I know it was quite a distance down in there to get down there. It was quite a steep bank to get down.

Q Do you remember of any canyon that you saw at that time which you have not seen since, the depth of which you can describe?

Answer to my knowledge that compared like that at all.

Q How?, A Nothing like the North fork.

Q Do you remember any canyon, gulch or stream that you saw at that time but which you have not seen since, the size dimensions, width or depth of which you can describe at this time? A Yes Sir Bear River.

Q You saw Bear River at

That time? Ayes River

Q Have not seen it since?

Ayes River

Q When did you see that?

A I crossed Bear River
in 1854 repeatedly

Q Repeatedly? Ayes River

Q But this you only crossed
twice? A I was at Lone
Hill twice

Q Your recollection of the
stream that you crossed re-
peatedly would probably
be much stronger and
much clearer than your
recollection of the stream
which you had only seen
but once or twice?

Ayes River

Q What was the width of
the stream at the bottom at
that point where the bridge
crossed it? A It may have
been 60 or 70 feet

Q Now was it not more than
2/200 of feet? A The
bridge was.

Q Now, the bottom of the

stream? And sir, I
think not that much

Q Would you be very positive
in your testimony or that
a Do the best of my judg-
ment

Q Are you clear on that
question? A I am clear

A Will you swear that it
was over 40 feet?

A I will swear nothing
about it. I will not swear
it was any distance

Q You will not swear that
it was any distance?

A I will not swear that it
was 120 feet

Q Will you swear that it
was 40 feet? And sir
but I should judge that it
was over 40 to my recollection
This pond I was in was
more than 40 feet in width,

Q How? A The pond I
went in swimming was
more than 40 feet in width
but it was wider there
than under the bridge

where the bridge spanned the river.

Q Do you swear that that pond was 15 feet deep?

A I do not.

Q Do you swear that it was 6 feet deep at any point?

A My judgment is that it was 15 feet.

Q Do you swear that it was 6 feet deep in any part of that pond? And I will not.

Q How tall were you at that time? A Nearly as tall as I am now.

Q How tall are you now?

A I never measured, I never had myself measured, I do not know ^{how} high I am.

Q You do not know how tall you are? A I feel pretty tall at times and at other times I do not feel so tall.

Q What time of the year were you there?

A Along in July or August it was after mining had ceased at Dutch Flats.

Q Did you see what was the color of the water at that time?

A Clear.

Q Very Clear?

A Very Clear.

Q Did you see any mining debris or tailings in it?

A None.

Q None at all?

A No sir.

Q At that Pond or hole that you speak of - it had steep precipitous banks had it not?

A It did. it came gradually down to this bottom this lowest place. on the Dutch Flats side I think it was precipitous but on the Iowa Hill side it was not so much so. I went in from the Iowa Hill

side.

Q Was the water running down in the River at that time?

A Yes.

Q Quite a volume?

A No sir not a very large stream but a little.

Q How long did you say that pond was?

A I did not say how long it was.

Q So you know how long?

A No sir

Q How wide did you say it was.

A I should judge from my recollection that it was over 40 feet.

Q You think it was over 40 feet wide?

A Yes.

Q How do you judge of that?

A Being into it that is my recollection of it now. it is a good while ago and I did not measure it

for any particular purpose
Q Did you swim across?

A Yes I swam across.

Q You had just eaten
your dinner?

A I had eaten dinner
previous to that I did
not eat my dinner and
swim at the same time

Q How long before that?

A Probably three quarters
of an hour.

Q You swam on a full
stomach?

A I had been prospecting
for fish and I concluded
that I would go in and
have a swim.

Q Did not that you think
enlarge your idea of the
distance there?

A I did not eat enough
to hurt me very bad

Q So you know how high
the place where the house
was above the water?

A I should judge from
my recollection that it must

have stood from 65 to 75 feet above where the water ran in the stream at that time.

Q Would you swear that it was 50 feet?

A No sir I will not swear but that is the best of my judgement and recollection

Q And your recollection is 25 years old?

A Yes.

Q How is the River there do you say?

A Where the bridge spanned the River?

Q Yes.

A It might have been 40 feet there.

Q What kind of tailings are there where the house was?

A Those are the tailings that came down. I should they were the tailings that come down from the mines probably tailings that I run myself from 1865 to 70

Q Probably tailings that you run there?

A Yes they looked something like the same character of tailings up on the bank there.

Q They run on the bank diagonally as the bank runs?

A Yes.

Q And then run down towards the water, is that not the fact?

A How?

Q And they run down towards the water diagonally?

A I do not understand you.

Q Was it an even filling across from where the house stood across the River?

A I think in some places the tailings are higher. There are some that come from Iowa Hill and come down to the River at Iowa Hill. Those tailings there came down to the River

And are deposited there in
that bar,

Q How deep are they
on the ground?

A I could not tell
you.

Q You do not know?

A No sir.

Q Are they over six
feet deep?

A Where the house stood
is all covered with
tailings, I do not know
how deep the tailings
are.

Q What kind of
tailings are they?
A Pebbles from the
mines.

Q Sand?

A Yes.

Q And small rock?

A Yes.

Q Gravel?

A Yes Gravel.

Q And that runs along
up the bank where it
has been filled by the

flood?

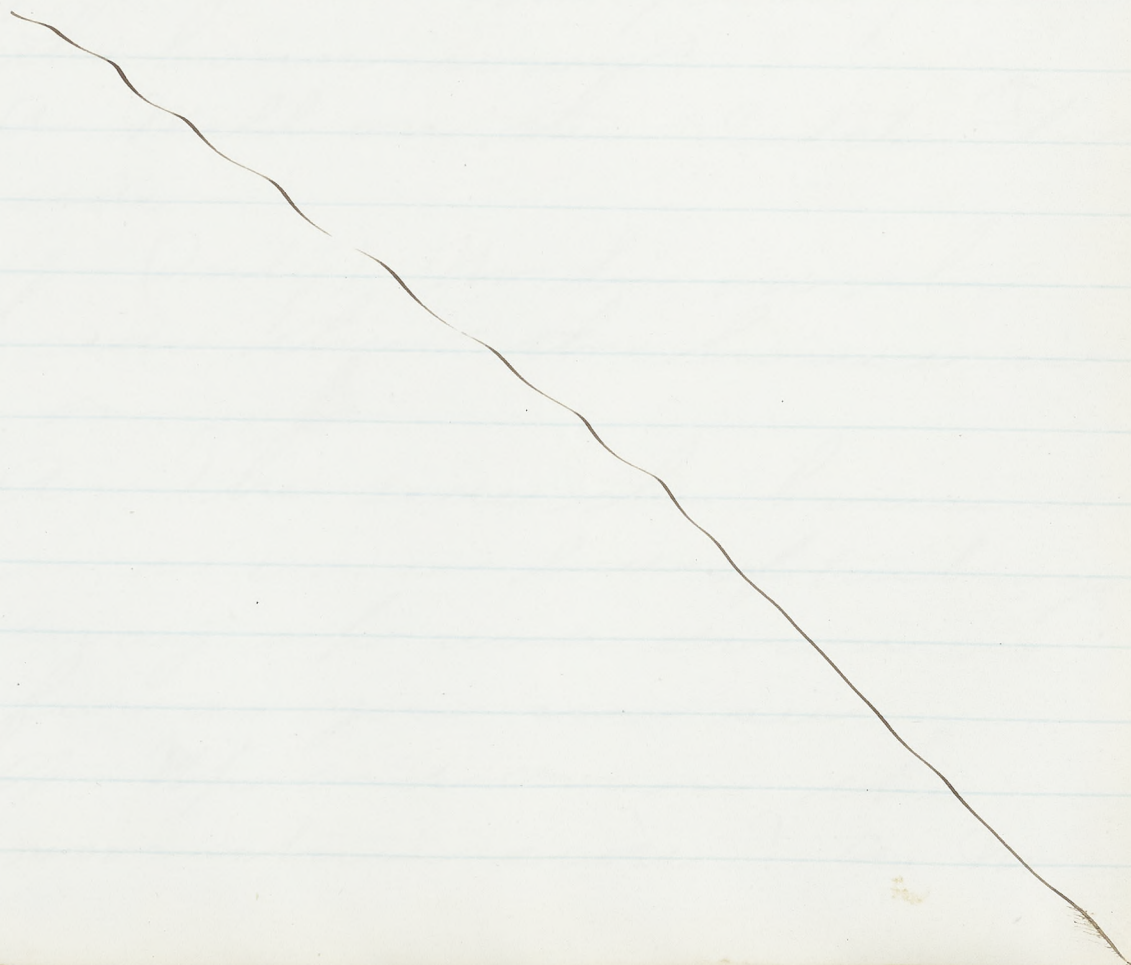
A It runs almost level
across the River,

Q From the place where
the house was?

A From where the bridge
was.

Q I mean from the
place where the house
was, does it run
straight across the
River from the place
where the house was?

A Where the current runs
it varies a little



2. And the tailings on the bank simply covered the bank having been left there by the water when it was up higher than it runs now. It is a solid mass there with a slight inclination from the center. Very slight. Indeed

Q. The banks run up in this way and the tailings cover it running up from the center

A. Not on such a grade as that.

Q. What is the grade from the house down?

A. Well on the Dutch Flat side—

Q. (Only) No line on the side that the house is on.

A. The side the house is on is on a bed of tailings way up and down as far as you can see

Q. Up and down the mountain side? A. No in

I did not say up and down
the mountain but up and
down the river.

Q. There were tailings that
had been deposited on the
bank by the floods that ran
along there? A. There

is no bank there not on
that side of the river.
There is no bank there
on the other side on the
other side there is a precipi-
tate high bedrock steep.

Q. On the Iowa Hill side
there is no bank there

Q. There never was a bank
there? A. There was
a bank there where the
house was.

Q. It was all covered with
tailings that were dropped
from the water.

A. Yes it has filled it up.

Q. To what extent you
do not know?

A. No Sir I do not know
how deep the tailings
are where the house stood

I know where the house stood. There was a nice
door yard there a flower
garden there. The lady there
cultivated some flowers

Q. Did I understand you
to say a while ago
that it has been the custom
of miners to deposit their
tailings wherever ^{they wanted} the ~~spawled~~
to. A. The most

convenient outlet has always
been used by miners to dump
their tailings in.

Q. Without respect to the
rights of others?

A. I did not say so.

Q. Is it a fact?

A. No sir men have got
rights I suppose

Q. They deposited their tail-
ings wherever it was most
convenient

A. A. They emptied in those
ravines and canyons or
anything where they could
get them out of the way

Q. You said that some

fellow objected to it
 A. I never heard of that since
 It was negatived right there
 and ~~it~~ never came up since.
 I never heard it mentioned
 since.

Q. I want to know now
 from you whether or not
 it is true that the miners
 deposited their tailings
 where it was most conven-
 ient without respect to the
 rights to other persons.

A. I never knew an in-
 stance where any body ob-
 jected around Dutch Flat
 or Gold Hill Runy and I
 never heard the question
 come up for debate.

Q. I want to know whether
 or not it was their cus-
 tom to disregard other
 peoples rights and deposit
 their tailings wherever
 they wanted to.

A. I could not tell because
 I never knew of any con-
 flicting rights. I never

knew of any body being injured from dumping the tailings out from the Gold Run.

Q. There was no custom then on that subject

A. There was not dispute

Q. There was not dispute?

A. It was a custom for the miners to seek to run their tailing in the most practicable outlet in these canyons

Q. They cared nothing about and paid no attention to anybody's rights except their own in doing that.

A. They never came in conflict with anybody in that way

Q. There was not any custom on that subject was there? A. That was the custom

Q. All you mean to testify as I understand you is that the miners dump their tailings in the nearest and most accessible

streams?

A. Yes

Q. And that is all?

A. That is the custom there. Where the find the shortest and most convenient place to drain their mine and their tailings

Q. That is the practice on that subject and the habit

A. That has been the practice. That has been the practice to my knowledge as far as my knowledge goes

Recess until
Thursday Dec 22^d / 1881 at 9.30 a.m.

